The

Justices' Handbook

A Guide to Law, Evidence and Procedure in Magistrates' Courts

BY

J. P. EDDY, K.C.

Recorder of West Ham

with a Foreword by

THE RIGHT HON. LORD OAKSEY

A Lord Justice of Appeal

(FORMERLY LORD JUSTICE LAWRENCE)

STEVENS

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FOREWORD

THE office of Justice of the Peace is a very ancient one. 'The Common Law', says Blackstone, 'hath ever had a special care and regard for the conservation of the peace, for peace is the very end and foundation of civil society.' So it was that even before the fourteenth century there were 'Conservators' or 'Keepers of the Peace', who to a large extent had been appointed by the people.

The modern system of appointment of Justices of the Peace, however, appears to have originated in 1327. Then it was that there was passed the statute 1 Edw. 3, stat. 2, c. 16, which provided that 'for the better keeping and maintenance of the peace, the King will that in every County good men and lawful, which be in the country, shall be assigned to keep the peace'.

From that period the statute book bears witness to the increasing importance of the office of Justice of the Peace. At one time, as is well known, a property qualification was required in the case of English and Welsh county Justices; but this was abolished in 1906 by the statute 6 Edw. 7, c. 16. On the other hand, many of the boroughs enjoyed the right in former times of appointing their own Justices; but these ancient privileges finally disappeared under the Municipal Corporations Act, 1883 (46 & 47 Vict. c. 18).

Today—apart from the special case of the City of London and those who have been authorised by statute to act as Justices by virtue of holding some office—Justices of the Peace are appointed by a Special Commission under the Great Seal, except in Lancashire, where the appointments are made under the Seal of the County Palatine of Lancaster. Official figures show that the number of County Benches in England and Wales is about 760, and there are 251 Benches in the Boroughs with separate Commissions. Thus the total number of Benches in England and Wales (inclusive of Lancashire) is about 1,010.

How important the judicial work of Justices of the Peace has become is indicated by the fact that 99.7 per cent. of the criminal cases that are brought in this country are disposed of in Magistrates' Courts.

Most of this work, of course, is undertaken by unpaid lay Justices of the Peace, and for myself I cannot doubt that it is a good thing that ordinary citizens should be closely associated with the administration of justice in Magistrates' Courts. I think, however, that they will be glad of a concise handbook to assist them in the discharge of their duties on the Bench, and this view commended itself to a gathering of persons interested in Magistrates' Courts over which I presided in 1945.

At that gathering Mr. J. P. Eddy, K.C., Recorder of West Ham, consented to write a 'Guide to Law,

Evidence and Procedure in Magistrates' Courts', and this handbook is the result. I know that every care has been taken to ensure that it shall be as helpful as possible to lay Justices, and I commend it to their careful study. It will, I hope, enable them more efficiently to discharge their duties on the Bench and at the same time it will assist them more readily to appreciate the advice which they receive from their Clerks on matters of law.

OAKSEY.

February, 1947.

PREFACE

I DO not doubt that it is in the public interest that lay Justices of the Peace should continue to take an active part in the administration of justice in Magistrates' Courts in this country.

It may well be thought, however, that to enable them to discharge their duties more efficiently on the Bench they need the assistance of a small practical handbook to which they can readily refer for an outline of the law which they have to administer and for some guidance on the relevant rules of evidence and procedure.

This handbook is an attempt to meet that need. It owes its inception to a gathering of persons interested in the administration of justice in Magistrates' Courts, including Lord Porter and Lord Oaksey (then Lord Justice Lawrence), which was convened by Mr. S. N. Grant-Bailey, M.A., LL.M., Barrister-at-Law.

If it is really to serve its purpose a book of this kind must necessarily be small—one that Justices of the Peace can conveniently take with them when they set forth to sit on the Bench. Its size precludes any idea that it contains anything more than brief summaries of the matters with which it deals.

Justices will, of course, always have the benefit of the advice of their Clerks on matters of law. None the less, it is hoped that this handbook will give them, and in particular new Justices, a real approach to the issues, whether of law or of fact, which they have to decide, and thus ensure so far as possible the due administration of justice in their Courts.

Having regard to the purpose and character of this handbook, I have not thought it right to cite a large number of decided cases. I have, however, given references to some which I think are likely to prove useful to Justices and others. At the same time, where I have summarised statutory provisions, I have in many instances quoted the Acts of Parliament referred to.

I am indebted to Mr. A. C. L. Morrison, C.B.E., lately Senior Chief Clerk of the Metropolitan Police Courts, for his assistance and many valuable suggestions in the preparation of this handbook.

I am also indebted to Mr. T. J. F. Hobley, LL.M.(Lond.), Barrister-at-Law, for kindly reading and checking the manuscript; to Mr. Sidney H. Lamb, Barrister-at-Law, for some useful suggestions in relation to Chapter 12, dealing with Liquor Licensing; and to Mr. C. W. Chandler, Barrister-at-Law, for his assistance in the preparation of the

Table of Statutes, the Table of Cases and Abbreviations, and the Index.

My thanks are also due to the Home Office for the statistics relating to the working of the Probation of Offenders Act, 1907, set out in Chapter 8, and for the information relating to remand homes and approved schools set out in Chapter 9.

J. P. E.

4 Brick Court,
Temple, E.C.4.

March 21, 1947.

Oaths to be taken by Justices of the Peace.

Oath of Allegiance.

I , do swear that I will be faithful and bear true Allegiance to His Majesty King George the Sixth, His Heirs and Successors, according to law. So help me God.

Judicial Oath.

I , do swear that I will well and truly serve our Sovereign Lord King George the Sixth in the Office of Justice of the Peace, and I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will. So help me God.

Declaration by Borough Justice.

I , hereby declare that I will faithfully and impartially execute the office of Justice of the Peace for the borough of according to the best of my judgment and ability.

Part I

The Judicial Duties of Justices of the Peace

Chapter 1

FUNDAMENTAL PRINCIPLES

Section 1

The Administration of Justice

1. It is of paramount importance that Justices of the Peace shall discharge their duties on the Bench with efficiency, impartiality, courtesy, patience, and a real desire to do justice.

2. Efficiency. (i) To enable Justices of the Peace to discharge their duties on the Bench with efficiency, it is necessary that they should take pains to familiarise themselves with the judicial work which will devolve upon them. One method, no doubt, is for them, and particularly for new Justices, to attend a Magistrates' Court as spectators and carefully to watch the proceedings. Indeed, no Justice of the Peace ought to take upon himself the high responsibility of adjudicating on the Bench unless at least he has first seen for himself how cases are tried and dealt with by experienced magistrates.

(ii) But, if Justices of the Peace are to discharge their duties with that degree of efficiency which the public have the right to expect of them, they must

acquire a fuller knowledge of the rules of evidence and procedure than can be obtained by merely attending a Magistrates' Court as spectators. It is true that in every Magistrates' Court there is a Clerk to the Justices to advise the Bench on matters of law. His work is and will remain an essential element in the due administration of justice. But it must be remembered that it is for Justices of the Peace and for them alone to control the proceedings in their Courts, and it is for them and them alone to decide the cases which come before them, whether they involve questions of fact or questions of law or both.

(iii) This handbook, it is hoped, will help Justices of the Peace not only to see that the proceedings in which they adjudicate are properly conducted, but will enable them more readily to understand and appreciate the advice which they receive from their Clerks on matters of law. It will also form the basis for that wider study of their duties which they may feel it incumbent upon them to undertake.

3. Impartiality. (i) It is necessary that Justices of the Peace shall not only be, but that they shall appear to be, completely impartial. In the first place, they ought not to adjudicate in any case in which, directly or indirectly, they are concerned, or in which to their knowledge they may be thought by members of the public to be concerned. They must be free from any kind of bias or suggested bias. Justice must not only be done, but must manifestly and undoubtedly seem to be done.

(ii) Every case should be dealt with, and should appear to everyone in Court to be dealt with, strictly on its merits. Nothing is more likely to sap public confidence in the administration of justice in a Magistrates' Court than if it should appear that the Bench has approached a particular case, or is in the habit of approaching a particular class of case, with a preconceived view. In every case the evidence must be carefully weighed, and the penalty or punishment, if any, must be carefully considered with due regard to all the relevant circumstances. No two cases are necessarily alike, and the penalty or punishment, if any, ought not to be stereotyped.

(iii) It must necessarily have an unfortunate effect on public confidence if the attitude of Justices of the Peace on the Bench suggests that they are ' on the side of the police '. No doubt it is true to say that, as a rule, the police are trustworthy witnesses and give their evidence with the single desire to serve the ends of justice. No doubt it is also true to say that a defendant has an interest in the result of a case which a police witness does not usually possess at all. But often the function of Justices of the Peace is to decide an issue between the police on the one hand and a member of the public on the other, and they cannot be impartial judges if they take or appear to take sides.

(iv) To obviate even the appearance of partiality for the police, care should be taken to see that their representative, whether he be the Chief Constable, a superintendent, or any other officer, has no better position in Court than the place assigned to

advocates. Justice does not manifestly and undoubtedly seem to be done, for instance, if the accustomed place for the police representative is alongside the Clerk to the Justices.

(v) Justices should be completely impartial in their attitude to opposing advocates. A representative of a Government Department, for example, is entitled to no better hearing than the representative of a defendant.

4. Courtesy. Courtesy on the part of Justices of the Peace towards advocates, witnesses and defendants alike will inevitably conduce to that smooth and dignified working of the Court without which the administration of justice cannot properly be achieved. Sharp exchanges between the Bench and others concerned in proceedings before them rarely contribute to the ascertainment of truth, and often impair or appear to impair that complete impartiality which Justices should ever seek to maintain. It must be remembered that many persons who appear before a Bench have never been in a Court of law before. Courtesy to such as these will normally put them at their ease and enable them to feel that they are assured of an impartial hearing.

5. Patience. A patient trial is necessary in every contested case if justice is not only to be done but manifestly and undoubtedly seem to be done. It is not, of course, in the power of Justices to ensure that they will always arrive at a right conclusion. Their decision in any event may well be disappointing to one side or the other. But dissatisfaction is

bound to arise if Justices give the impression that they begrudge the time necessary to hear a case properly, or are unwilling to listen to arguments or to listen to them fully, or are otherwise endeavouring to take a short cut. Justice in a hurry is generally well calculated to lead to injustice.

6. Real Desire to do Justice. (i) Above all, Justices of the Peace should be animated by a real desire to do justice. That should be the golden rule in every Magistrates' Court. Where it is conscientiously observed, the administration of justice will assuredly retain public confidence and esteem. Where it is disregarded, even a strict compliance with the rules of evidence and the forms of procedure and the latest judicial decisions will in no way compensate for its non-observance.

(ii) As already observed, many persons who appear before a Bench have never been in a Court of law before. Such persons are unversed in law, unfamiliar with the procedure, and often without the necessary ability properly to elicit the relevant facts. A good Bench will make allowance for these matters and will give such persons all the assistance they can to ensure that there is a fair trial.

(iii) No better illustration of the need for such assistance can be given than that afforded by the position of a defendant who at the conclusion of the evidence of a witness for the prosecution is asked whether he desires to put any questions. Instead of putting questions he usually begins to make a statement indicating what his defence is. Not

infrequently he is at once cut short and told that this is not the time for making a statement but for asking questions. The result is that he retires disconcerted and frustrated and never succeeds in properly putting his case at all. The right course in such a case is for the Chairman of the Bench to let him continue with his statement and then put questions to the witness based upon it. Thus he will show a real desire to do justice, and thus in fact he will make it possible for justice to be done.

(iv) Similarly, when at the end of a case for the prosecution a defendant is told that he has the option of going into the witness box or of making a statement not on oath, it should be made perfectly clear to him what the effect of his choice will be. It should be explained to him that if he goes into the witness box he will be liable to be cross-examined, but that the Bench will necessarily give greater weight to a statement made on oath and subject to cross-examination than to a statement made not on oath and not subject to cross-examination.

* * * * * *

7. It is by adherence to these principles, it is submitted, that Justices will be enabled, in the words of the Judicial Oath, to do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will.

Section 2

Some Features of Criminal Law and Practice

8. Sources of Law. The sources of English law are :—

(i) The Common Law—that body of law, the growth of centuries, which is largely embodied in judicial decisions.

(ii) Statute Law—that body of law which is laid down in Acts of Parliament.

(iii) Delegated Legislation—that body of law which is made under authority conferred by Parliament, *e.g.*, Orders made by Ministers of the Crown and by-laws made by local authorities.

9. Age of Criminal Responsibility. (i) It is to be conclusively presumed that no child under the age of eight years can be guilty of any offence (Children and Young Persons Act, 1933, s. 50).

(ii) In the case of an infant between the age of eight and fourteen years who commits an act which, if done with a guilty mind, would amount to a crime, there is a presumption that he had not sufficient capacity to know that what he did was wrong; but this may be rebutted by evidence.

(iii) In the case of persons over the age of fourteen years they are presumed to possess a sufficient degree of reason to be responsible for crimes unless the contrary is proved.

10. Mens Rea. At Common Law, mens rea—a guilty mind—is an essential element in the commission of crime. There is a presumption that a man

must be taken to intend the natural consequences of his acts; and, where it is necessary to establish a specific intent, this is usually done by proving acts from which such intent may be inferred. But while the burden of proof in this respect is usually on the prosecution, there are certain exceptions to this rule which have been created by or under statutes, as, for example, where the law imposes on a defendant the burden of proving that he had no knowledge of some specified act or omission, or of establishing various matters by way of defence. Examples of such matters are to be found in paragraphs 34, 43 and 52. In all such cases Justices should carefully satisfy themselves as to the precise limits of the proof which the law requires.

11. Drunkenness and Intent. Where a specific intent is an essential element in an offence, evidence of a state of drunkenness rendering the accused incapable of forming such an intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime. If he was so drunk that he was incapable of forming the intent required he could not be convicted of a crime which was committed only if the intent was proved. This does not mean that the drunkenness in itself is an excuse for the crime, but that the state of drunkenness may be incompatible with the actual crime charged and may therefore negative the commission of that crime (*Director of Public Prosecutions* v. *Beard*, [1920] A.C. 479; 36 T.L.R. 379; 84 J.P. 129; 122 L.T. 625).

12. Felonies and Misdemeanours. Crimes are classified into felonies and misdemeanours. In general, felonies are the more serious offences. Old-time distinctions between felonies and misdemeanours are now of little practical importance. Examples of felonies are burglary, housebreaking and larceny. Examples of misdemeanours are obtaining money by false pretences and fraudulent conversion.

13. Ignorance of the Law. It is often said that everyone is presumed to know the law. This statement is based on a misconception. No one is presumed to know the law. The rule which persons who make this statement have in mind is that ignorance of the law does not excuse—a maxim of very different scope and application (*Evans* v. *Bartlam*, [1937] A.C. 479).

14. Autrefois Acquit and Autrefois Convict. (i) It is a rule of law that a person may not be put in peril twice for the same offence. Accordingly, it is open to a defendant to plead that he has been lawfully acquitted (autrefois acquit) or lawfully convicted (autrefois convict) of the offence charged.

(ii) When a case is before the Justices it is very doubtful whether it is right to say that a plea that a man has been already acquitted or convicted on the same facts is in any strictness a plea of autrefois acquit or autrefois convict. Those pleas are pleas which have to be pleaded formally because they form part of the record of the Court. Such pleas in a Court of Summary Jurisdiction are merely an

informal way of giving effect to the rule of law in question (*Flatman* v. *Light*, [1946] 1 K.B. 414).

15. Husband and Wife. At one time there was a presumption that an offence committed by a wife in the presence of her husband was committed under his coercion. That presumption has been abolished. But on a charge against a wife for any offence other than treason and murder it is a good defence to prove that the offence was committed in the presence and under the coercion of the husband.

16. Rules of Evidence. A trial in a Magistrates' Court, as in every other Court of law, is governed by rules of evidence. Some Justices of the Peace do not always appreciate the purpose of these rules. Their purpose is not to prevent a Court of law from getting at the truth. Their purpose is to ensure that the Court shall have the best evidence, and that it shall act on the testimony of witnesses who can speak of what they have actually seen or heard at the material time and not of what they have been subsequently told by other persons. It would or might be unfair for an accused person to be judged on statements made behind his back with which he has had no opportunity of dealing. So in general the law excludes what it calls hearsay evidence. Every Justice of the Peace should have a working knowledge of the rules of evidence, and these are dealt with in Chapter 4.

17. Presumption of Innocence. (i) It is a cardinal rule of English law—

(a) That a person accused of an offence shall be

judged on evidence given in his presence in open Court and on that alone.

(b) That (with the exceptions indicated in paragraph 10) he shall be presumed innocent—unless and until it be established beyond reasonable doubt that he is guilty of the offence charged.

(c) That, in general, if an accused person be of bad character this fact shall not be revealed to the Court whose duty it is to determine whether the charge is made out or not, unless and until it decides to convict.

(ii) Accordingly, it would be wrong for Justices of the Peace, when they retire to consider their decision, to take into account any information about the case or about the accused which has not been given in evidence in his hearing. Hearsay evidence should be as rigorously excluded in the retiring room as in general it is in open Court. The Justices should give their decision on the evidence tendered during the proceedings and on that alone.

(iii) It is a mistake to speak of giving the accused the benefit of the doubt. When, as is generally the case, the burden of proof rests on the prosecution, if there is a doubt—a reasonable doubt—the charge is not made out. In that case the accused is entitled as of right to be acquitted.

18. Object of Punishment. (i) The real object of punishment is the prevention of crime. Every punishment, therefore, is intended to have a two-fold effect:—

(a) To prevent the person who has committed a crime from repeating it.

(b) To prevent other members of the community from committing similar crimes.

(ii) In cases where the Justices have decided to convict, it is, of course, essential for them, in considering the question of punishment, if any, to have the fullest available information as to the character and antecedents, and, if need be, the mental condition of the person charged.

(iii) There are many cases where the need to inflict punishment deterrent to others does not directly arise, but where the real problem is to prevent the offenders from repeating their offence. As has been observed, punishment has that object, but it will often be found that the absence of punishment and, indeed, the absence of a conviction, will most surely achieve the end in view. In appropriate cases, therefore, the fullest use should be made of the Probation of Offenders Act, 1907, under which, though Justices may think that a charge is proved, they may none the less dismiss it.

(iv) Cases arise from time to time where as a deterrent to others the infliction of some punishment, and it may well be severe punishment, appears to be necessary. Of these the Justices must be the judges on the particular facts before them.

The subject of Probation and Punishment is more fully discussed in Chapter 8.

19. Cases for Committal. Certain serious offences are tried at Quarter Sessions or at the Assizes.

Where a person is charged with any of these offences the sole duty of the Justices is to determine whether there is a *prima facie* case for trial, that is to say, whether the evidence disclosed is such that, if uncontradicted and if believed, it would be sufficient to prove the charge against the accused. Where a *prima facie* case is in fact made out it is the duty of the Justices to commit the case for trial. They ought not to reduce the charge to a lesser charge in order to give themselves power to deal with the case themselves.

Chapter 2

SOME OFFENCES DEFINED

20. It will be of assistance to Justices of the Peace to have available in an easily accessible form a brief summary of some of the offences which they may have to consider on the Bench; and this chapter is an attempt to meet that need. The paragraphs which follow do not purport to contain complete statements of the law in relation to the offences dealt with, but it is hoped that at least they will enable Justices to appreciate more readily the advice which they may receive from their Clerks on some of the cases which come before them.

21. Arson. Arson consists in unlawfully and maliciously setting fire to buildings or to certain other property, *e.g.*, a stack of corn. In order to be an offence the burning must be done wilfully. Mere negligence is not sufficient to constitute the offence (Felony; statute: Malicious Damage Act, 1861).

22. Assault and Battery. An assault is a movement which attempts or threatens the unlawful application of force to another person. A battery is the actual application of force to another person which is effected in an angry, violent or revengeful manner.

23. Begging. A person who places himself in the street to beg, that is to say, to gather alms as a

means of livelihood, is *prima facie* guilty of an offence. When such a *prima facie* case is made the Justices must be satisfied that the accused has in fact adopted the calling of a beggar. He may adopt that calling for one day only, and it is not necessary to prove that he has followed it previously or that he intends to follow it in the future. To make a *bona fide* collection for a charitable object does not constitute the offence of begging (statute : Vagrancy Act, 1824).

24. BIGAMY. Bigamy is committed when a married person marries any other person during the life of his or her spouse, unless the legal wife or husband has been continually absent from the accused husband or wife during the seven years preceding the second marriage and has not been known by him or her to be living within that time. A *bona fide* belief on reasonable grounds in the death of the husband or wife at the time of the second marriage also affords a good defence (*R.* v. *Tolson* (1889), 23 Q.B.D. 168) (Felony ; statute : Offences against the Person Act, 1861, s. 57).

25. BURGLARY. Burglary is committed when anyone in the night either (i) breaks and enters the dwelling-house of another with intent to commit any felony therein or (ii) breaks out of the dwelling-house of another, having (a) entered the dwelling-house with intent to commit any felony therein, or (b) committed any felony in the dwelling-house. The place, therefore, must be a dwelling-house, and the time must be in the night, that is to say, the interval

between nine o'clock in the evening and six o'clock in the morning of the next succeeding day. The time is Greenwich mean time, except during any period of Summer Time. The breaking may be either actual or constructive. It is, for example, an actual breaking if an offender unlooses any fastening to a door or window; but if a door or window be already partly open it will not be a breaking to open it still further. It is a constructive breaking if an offender obtains admission by some artifice, trick or threat for the purpose of effecting a felony (Felony; statute: Larceny Act, 1916, s. 25).

26. Carnal Knowledge of Girl 13 to 16. In the case of a man of twenty-three years of age or under who is charged with having carnal knowledge, or attempting to have carnal knowledge, of a girl between thirteen and sixteen years of age, the presence of reasonable cause to believe that she was over the age of sixteen years is a valid defence on the first occasion on which he is charged with this offence (Misdemeanour; statutes: Criminal Law Amendment Acts, 1885 and 1922).

27. Club Offences. (i) There is an obligation to register every club which occupies premises which are habitually used for the purposes of a club and in which any intoxicating liquor is supplied to members or their guests.

(ii) The Clerk to the Justices of every Petty Sessional Division keeps a register of all such clubs within the division.

(iii) It is an offence to supply or sell intoxicating

liquor to any member or guest on the premises of an unregistered club.

(iv) Justices may make an Order directing that a club be struck off the register on the ground (amongst others) that it is not conducted in good faith as a club; or that it is kept or habitually used for an unlawful purpose; or that there is frequent drunkenness on the club premises; or that illegal sales of intoxicating liquor have taken place on the club premises; or that persons who are not members are habitually admitted to the club merely for the purpose of obtaining intoxicating liquor (statute: Licensing (Consolidation) Act, 1910).

28. Conspiracy. Conspiracy is the agreement of two or more persons to do something contrary to law or to use unlawful means in the carrying out of an object not otherwise unlawful. As its name implies, the essence of the offence is combination. A man cannot conspire with himself. So, as in relation to this offence the law treats husband and wife as one person, an unlawful combination by him and her alone does not amount to a conspiracy (Misdemeanour at Common Law; Felony under Explosive Substances Act, 1883, s. 3).

29. Dangerous Dog. A Magistrates' Court may take cognisance of a complaint that a dog is dangerous and not kept under proper control. If it appears to the Court that such dog is dangerous, it may make an order directing the dog to be kept by the owner under proper control or destroyed (statute: Dogs Act, 1871, s. 2).

30. Demanding Money with Menaces. This offence, commonly termed 'Blackmail', is committed when a person—

(i) utters, knowing the contents thereof, any letter or writing demanding of any person with menaces and without any reasonable or probable cause any property or valuable thing (the words 'without any reasonable or probable cause' apply to the demand and not to the accusation threatened, the truth or falsity of which is immaterial);

(ii) utters, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person (whether living or dead) of a crime (specified in section 29 of the Larceny Act, 1916) with intent to extort or gain thereby any property or valuable thing from any person;

(iii) with intent to extort or gain any property or valuable thing from any person, accuses or threatens to accuse either that person or any other person (whether living or dead) of any such crime (Felony; statute: Larceny Act, 1916, s. 29).

31. Embezzlement. Embezzlement is the fraudulent appropriation by a clerk or servant, or a person employed in the capacity of a clerk or servant, of the whole or any part of any chattel, money or valuable security received by him for his master or employer (Felony; statute: Larceny Act, 1916, s. 17).

32. Factories Offences. The Factories Act, 1937,

contains provisions for the secure fencing of dangerous parts of machinery in factories. Contravention of these provisions, or of any Regulation or Order made under the Act, constitutes an offence subject to the precise conditions laid down. Section 12 deals with prime movers; section 13 with transmission machinery; and section 14 with other machinery. Section 137 lays down the procedure whereby the occupier or owner of a factory may seek to exempt himself from liability on conviction of the actual offender.

33. False Pretences. To constitute the offence of obtaining any chattel, money or valuable security by false pretences there must be (i) a representation of an existing fact—a statement which relates only to the future is not sufficient; (ii) the representation must be false; (iii) it must have been made with intent to defraud, and (iv) it must have induced the owner to part with his chattel, money or valuable security (Misdemeanour; statute: Larceny Act, 1916, s. 32).

34. Food and Drugs. (i) Section 3 of the Food and Drugs Act, 1938, contains a prohibition against the sale of any food or drug which is not of the nature, substance or quality demanded. In proceedings under this section it is open to a defendant to prove certain matters of defence which are set out in section 4.

(ii) Under section 9 a person is guilty of an offence who (a) sells, or offers or exposes for sale, or has in his possession for the purpose of sale or of prepara-

tion for sale, or (b) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale, any food intended for, but unfit for, human consumption.

(iii) A person against whom proceedings are brought under the Act may set up the defence that some other person was responsible for the commission of the offence charged, and the procedure to be followed where that course is taken is set out in section 83. The conditions under which a warranty may be pleaded as a defence are dealt with in section 84.

35. Forgery. (i) Forgery is the making of a false document in order that it may be used as genuine. A document is false if the whole or any material part of it purports to be made by or on behalf or on account of a person who did not make it or authorise its making. Special protection has been given to many classes of instruments by making forgery of any of them a felony.

(ii) There are various ways in which a person may be regarded as 'uttering' a forged document as when he uses, offers, publishes, disposes of, tenders in payment or in exchange or puts off the document (statute: Forgery Act, 1913).

36. Fortune-telling. Merely to tell fortunes is an offence in itself. It matters not whether the fortune-teller professes to believe in his skill or not (*Stonehouse* v. *Masson* [1921] 2 K.B. 818) (statute: Vagrancy Act, 1824).

37. Fraudulent Conversion. The offence of

fraudulent conversion is committed when a person fraudulently converts to his own use or benefit or the use or benefit of any other person, any property, or the proceeds of any property, which he (either solely or jointly with any other person) (i) has been entrusted with in order that he may retain it in safe custody or apply, pay or deliver it for any purpose or to any person; or (ii) has received for or on account of any other person (Misdemeanour; statute: Larceny Act, 1916, s. 20).

38. HOUSEBREAKING. (i) Housebreaking is in general identical with burglary as regards the breaking, the entry and the intention that it requires. But it is not limited to any particular hours, and it extends to a wider range of buildings such as (in addition to a dwelling-house) a shop, warehouse, office, factory or workshop (Felony; statute: Larceny Act, 1916, s. 26).

(ii) Entering, that is, without breaking, a dwelling-house in the night with intent to commit a felony therein likewise constitutes the offence of housebreaking (Felony; statute: Larceny Act, 1916, s. 27).

39. INDECENT ASSAULT. It is no defence to a charge of indecent assault on a child or young person under the age of sixteen to prove that he or she consented to the act of indecency.

40. LARCENY. (i) A person steals who, without the consent of the owner, fraudulently and without a claim of right made in good faith, takes and carries away anything capable of being stolen, with intent,

at the time of such taking, permanently to deprive the owner thereof (statute: Larceny Act, 1916, s. 1).

(ii) It may be pointed out, by way of illustration, that a person who takes another's motor car without the owner's consent merely for the purpose of joy-riding, intending to return it, is not guilty of larceny. He has no intention 'permanently to deprive the owner thereof'. But he may be guilty of an offence under section 28 of the Road Traffic Act, 1930 (paragraph 47 (iv)).

41. LIBEL. (i) A criminal prosecution for libel ought only to be instituted when the publication could tend to disturb the peace and harmony of the community. If the publication is only of a private character, and there is nothing to show that it would disturb the peace and harmony of the district, the parties should be left to their civil remedies.

(ii) Provided that its publication is likely to cause a breach of the peace, any statement which amounts to a libel in a civil action is a libel for the purpose of criminal proceedings. A test of whether particular words in their ordinary meaning are capable of a defamatory meaning is: Would the words tend to lower the complainant in the estimation of right-thinking members of society generally? (*Sim* v. *Stretch* [1936] 2 All E.R. 1237; 52 T.L.R. 669).

(iii) It is not necessary in criminal cases that there should be publication of the words complained of to some third party. It is sufficient if the words are communicated by the defendant to the prosecutor himself, provided that they are likely to provoke the

prosecutor and excite him to commit a breach of the peace.

(iv) At Common Law the truth of the libel was no defence to criminal proceedings—hence the phrase 'the greater the truth the greater the libel'. There were two questions for the consideration of the Justices—first, whether the matter complained of was libellous, and secondly, whether the publication of it was brought home to the accused. On the other hand, the accused might prove that the publication of the words in question was privileged or that they were a fair and *bona fide* comment on a matter of public interest.

(v) Nowadays, as the result of the alternatives which have been introduced by statute, there are two cases in which the Justices can receive evidence of the truth of the libel: (1) Where the defendant is charged under section 4 of the Libel Act, 1843 (Lord Campbell's Act), with maliciously publishing a defamatory libel, knowing the same to be false, and (2) by virtue of section 4 of the Newspaper Libel and Registration Act, 1881, upon the hearing of a charge against a proprietor, publisher, editor or any person responsible for the publication of a newspaper for a libel published therein.

42. Loitering with Intent to Commit Felony. (i) This offence is committed by a suspected person or reputed thief frequenting or loitering about or in 'any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway or avenue

leading thereto, or any place of public resort, or any avenue leading thereto, or any street, or any highway or any place adjacent to a street or highway' with intent to commit a felony (statute: Vagrancy Act, 1824, as amended by the Prevention of Crimes Act, 1871, and the Penal Servitude Act, 1891).

(ii) A police officer may take into custody any person whom he finds lying or loitering in any highway, yard or other place during the night and whom he has good cause to suspect of having committed or being about to commit any felony against the Larceny Act, 1916 (statute: Larceny Act, 1916, s. 41).

43. Nocturnal Offences. There are certain nocturnal offences which approximate to burglary, though they are of a much less serious character. They are misdemeanours, and include the following:

(i) Being found by night in possession of housebreaking implements without lawful excuse (the proof of which lies on the person accused).

(ii) Being found by night having the face blackened or disfigured with intent to commit a felony.

(iii) Being found by night in any building with intent to commit a felony (statute: Larceny Act, 1916, s. 28).

44. Perjury. (i) This offence is committed in a judicial proceeding when a lawful oath or affirmation is administered and the witness wilfully makes a statement material in the proceedings which he knows to be false or does not believe to be true.

(ii) Subornation of perjury is procuring a person to commit the offence (statute : Perjury Act, 1911).

45. Public Mischief. Conduct causing or tending to cause a public mischief, *e.g.*, making false statements to the police which lead them to devote their time and services to the investigation of an idle charge, is an offence, namely, the common law misdemeanour of causing a public mischief.

46. Receiving. On a charge of receiving stolen goods knowing them to have been stolen, the onus of proving guilty knowledge always rests upon the prosecution. In considering whether they should commit a prisoner for trial on such a charge it may be a guide to Justices to have in mind the direction which a Judge gives to a jury in such a case. It is that upon the prosecution establishing that the accused was in possession of goods recently stolen, they may, in the absence of any explanation by the accused of the way in which the goods came into his possession, which might reasonably be true, find him guilty; but that if an explanation be given which the jury think might reasonably be true, and which is consistent with innocence, although they are not convinced of its truth, the prisoner is entitled to be acquitted, inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused (statute : Larceny Act, 1916, s. 33).

47. Road Traffic.—(i) careless driving. This offence consists in driving a motor vehicle on a road without due care and attention or without reasonable

consideration for other persons using the road (statute: Road Traffic Act, 1930, s. 12).

(ii) RECKLESS OR DANGEROUS DRIVING. In deciding whether a person is guilty of the offence of driving a motor vehicle on a road recklessly, or at a speed or in a manner which is dangerous to the public, the Justices must have regard to all the circumstances of the case, including the nature, condition and use of the road, and the amount of traffic which is actually at the time, or which might reasonably be expected to be, on the road. Particulars of a conviction in respect of this offence are to be endorsed on any licence held by the person convicted. A second or subsequent conviction involves disqualification for holding or obtaining a licence for such period as the Court thinks fit unless the Court, having regard to the lapse of time since the previous or last previous conviction or for any other special reason, thinks fit to order otherwise (statute: Road Traffic Act, 1930, s. 11).

(iii) DRIVING UNDER INFLUENCE OF DRINK OR DRUGS. A person commits this offence who, when driving or attempting to drive, or when in charge of a motor vehicle on a road or other public place, is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle. To justify a conviction, therefore, it must be established not only that the defendant was under the influence of drink or a drug but that he was thereby incapable of having proper control of his vehicle (*R.* v. *Hawkes* (1931), 22 Cr.App.R. 172).

A person convicted of this offence must, unless the Court for special reasons thinks fit to order otherwise, and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a licence (statute: Road Traffic Act, 1930, s. 15).

(iv) TAKING MOTOR VEHICLE WITHOUT OWNER'S CONSENT. It is an offence for a person to take and drive away any motor vehicle without having either the consent of the owner or other lawful authority. If, however, on summary proceedings, the Court is satisfied that the accused acted in the reasonable belief that the owner would, in the circumstances of the case, have given his consent if he had been asked for it, the accused is not liable to be convicted (statute: Road Traffic Act, 1930, s. 28).

(v) INSURANCE AGAINST THIRD-PARTY RISKS. It is an offence for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to such user a policy of insurance in respect of third-party risks.

A person convicted of this offence must, unless the Court for special reasons thinks fit to order otherwise, and without prejudice to the power of the Court to order a longer period of disqualification, be disqualified for holding or obtaining a licence for a period of twelve months from the date of the conviction (statute: Road Traffic Act, 1930, s. 35).

(vi) NEGLECT OF TRAFFIC DIRECTIONS. It is an offence for any person driving any vehicle to neglect or refuse to stop it or to make it proceed in or keep

to a particular line of traffic when directed to do so by a police constable engaged in the regulation of traffic in a road; it is also an offence to fail to conform to the indication given by a traffic sign (statute: Road Traffic Act, 1930, s. 49).

(vii) LEAVING VEHICLES IN DANGEROUS POSITIONS. It is an offence for any person in charge of a vehicle to cause or permit it, or any trailer drawn by it, to remain at rest on any road in such a position or in such condition or in such circumstances as to be likely to cause danger to other persons using the road (statute: Road Traffic Act, 1930, s. 50).

(viii) EXCEEDING SPEED LIMIT. It is an offence for any person to drive a motor car on a road in a built-up area at a speed exceeding thirty miles per hour (Road Traffic Act, 1934, s. 1, continued by Expiring Laws Continuance Act, 1946, until December 31, 1947).

DISQUALIFICATIONS AND ENDORSEMENTS

48. (i) Where, for special reasons, Justices exercise the power which they have of not endorsing a licence, or not disqualifying a person for holding or obtaining a licence, they should state in their judgment what the special reasons are (*R.* v. *The Recorder of Leicester, ex p. Gabbitas*, [1946] Knight's Local Govt. Repts., vol. 44, 168).

(ii) The Home Secretary has suggested, where Justices decide that there are ' special reasons ' in a particular case, that, in addition to such reasons being stated in Court, a brief note of them should be

entered in the Court Register (Home Office Circular, No. 162/1946).

(iii) A 'special reason' must be special to the facts which constitute the offence. A circumstance peculiar to the offender is not a special reason (*R.* v. *Crossan*, [1939] 1 N. I. 106; *Whittall* v. *Kirby* (1946), 62 T. L. R. 696). The illustrations set out below are taken from *Whittall* v. *Kirby*:—

(a) That a man is a professional driver cannot be called a special reason.

(b) No considerations of financial hardship, or of the offender being before the Court for the first time, or that he has driven for a great number of years without complaint can be regarded as a special reason.

(c) In the case of driving under the influence of drink or drugs, perhaps a special reason might be found if the Court was satisfied that a drug had been administered to a driver without his knowledge.

THE HIGHWAY CODE

49. A failure on the part of any person to observe any provision of the Highway Code (a revised edition of which was approved by Parliament in July, 1946) may in any proceedings (whether civil or criminal, and including proceedings for an offence under the Road Traffic Act, 1930) be relied upon by any party to the proceedings as tending to establish or to negative any liability which is in question (statute: Road Traffic Act, 1930, s. 45).

50. Street Betting. Any person frequenting or

loitering in streets or public places on behalf either of himself or of any other person for the purpose of bookmaking, or betting or wagering, or agreeing to bet or wager, or paying or receiving or settling bets, is guilty of an offence under the Street Betting Act, 1906.

51. THREATS. Any person who in any public place or at any public meeting uses threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, is guilty of an offence (statute: Public Order Act, 1936, s. 5).

52. WEIGHTS AND MEASURES. The Sale of Food (Weights and Measures) Act, 1926, contains a number of provisions for the better protection of the public in relation to the sale of food. It prohibits the giving of short weight, measure or number. It contains provisions designed to secure that in the sale of certain articles of common consumption such as tea, ground coffee, cocoa and potatoes, as well as butchers' meat and bread, such sale shall in general be by net weight. It provides certain safeguards for traders in respect of proceedings under the Act. For instance, it is open to a defendant to prove that an alleged deficiency of weight or measure or number was due to a *bona fide* mistake or accident, or other causes beyond his control or that in respect of an alleged deficiency in weight it was due to unavoidable evaporation or drainage and that due care and precaution had been taken to avoid such deficiency. The Act (except so far as it applies to pre-packed articles of food) applies only to retail dealings.

Chapter 3

COMMENCEMENT OF PROCEEDINGS

53. There are three ways in which a person may be brought as a defendant before a Magistrates' Court :—

(i) By Arrest Without a Warrant.
(ii) By Arrest on a Warrant.
(iii) By Summons.

Section 1

By Arrest Without a Warrant

54. Arrest by Constable. (i) At Common Law a police officer may arrest on reasonable suspicion of felony, whether a felony has or has not been committed.

(ii) In a case of misdemeanour, a police officer has at Common Law no power to arrest without a warrant except when a breach of the peace has been committed in his presence, or when he has reasonable ground to believe that a breach of the peace is about to be committed or renewed in his presence.

(iii) There are many statutes which expressly authorise police officers in specific cases to arrest without a warrant. For instance, section 15 of the Road Traffic Act, 1930, authorises a police constable without warrant to arrest any person committing an offence under that section, *i.e.*, any person who when driving or attempting to drive, or when in

charge of, a motor vehicle on a road or other public place is under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle.

55. Arrest by Private Person. (i) The power of a private person to arrest is limited at Common Law to cases (a) where treason or felony has been actually committed or attempted, (b) where there is immediate danger of treason or felony being committed, or (c) where a breach of the peace has been actually committed or is reasonably apprehended.

(ii) In addition to these Common Law powers, various statutes have conferred on private persons the right to arrest in certain specific cases. In some cases this right is given generally to any person, as in section 41 of the Larceny Act, 1916; in others, to certain specified persons or under certain conditions.

56. Indictable Offence at Night. It is lawful for any person to apprehend a person found committing any indictable offence in the night, that is to say, between 9 p.m. and 6 a.m. (statute: Prevention of Offences Act, 1851).

Section 2

By Arrest on a Warrant

57. Justices' Powers. (i) Where at Common Law or under any Act there is power to arrest a person without a warrant, a warrant for his arrest

may be issued (Criminal Justice Administration Act, 1914, s. 27).

(ii) A Justice of the Peace for any County, City, Borough or place in England or Wales has power to issue a warrant for the arrest of any person who has committed, or is suspected of having committed, any indictable offence within his jurisdiction. He has the like power in the case of any person suspected of having committed any such offence outside his jurisdiction who is or is suspected to be within his jurisdiction.

(iii) Where a summary offence has been committed, or is suspected to have been committed, by a person who is residing or is, or is believed to reside or be, within the jurisdiction of a Justice, that Justice has power to issue a warrant of any description in the same manner as if the offence had been committed within his jurisdiction. Every warrant so issued must, however, direct that the accused be taken before a Court of Summary Jurisdiction having power to deal with the case (Criminal Justice Act, 1925, s. 31).

58. The Information. (i) Before a warrant can be issued there must be an information in writing and on oath or affirmation.

(ii) The information is sufficient if it contains a statement of the specific offence with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the charge.

(iii) The statement of the offence must describe

the offence shortly in ordinary language, avoiding as far as possible the use of technical terms. It is not necessary to state all the essential elements of the offence. If the offence charged is one created by statute, the statement of offence must contain a reference to the section of the statute creating the offence.

(iv) After the statement of the offence, necessary particulars of the offence are to be set out in ordinary language, in which the use of technical terms is not required.

59. Practice in Metropolitan Courts. It is the practice in the Metropolitan Courts, before granting a warrant, to insist upon sworn information setting out the facts and not merely a bare statement of the offence having been committed. The Magistrates are usually very particular about this, and will not issue a warrant without assuring themselves that there is evidence to support the charge.

60. Executing a Warrant. A warrant lawfully issued by a Justice of the Peace may be executed by any constable at any time. This is so though the warrant is not in his possession at the time of its execution. But the warrant must, on the demand of the person apprehended, be shown to him as soon as practicable after his arrest.

Section 3

By Summons

61. Oral Information. A summons may be issued on an oral and unsworn information. Before

granting a summons Justices should assure themselves that there is evidence to support the charge or complaint.

62. Form of Summons. A summons is an order in writing signed by a Justice and directed to a person requiring him to attend before a Justice or Justices to answer a charge or complaint.

63. One Offence. Only one offence or one matter of complaint must be set out in the summons.

64. Service of Summons. (i) In general, a summons is served by a constable or other police officer upon the party to whom it is directed by delivering it to such party personally, or, if he cannot conveniently be met with, then by leaving it with some person for him at his last or most usual place of abode.

(ii) Provision is also made by the Service of Process (Justices) Act, 1933, for service of summonses by registered post.

65. Failure to Appear. If the defendant fails to appear in answer to the summons a warrant can then be issued, or, in summary cases, the hearing may proceed in his absence.

Chapter 4

RULES OF EVIDENCE

66. A Cardinal Principle. It is a cardinal principle of English law that an accused person can properly be convicted in a Court of Justice only upon evidence which is legally admissible and which is adduced at his trial in legal form.

Section 1

Evidence Classified

67. (i) There are three kinds of evidence:—

(a) Oral Evidence.

(b) Documentary Evidence.

(c) Real Evidence, that is to say, Material Objects other than Documents.

(ii) Evidence is also further classified as:—

(a) Direct Evidence.

(b) Circumstantial Evidence.

68. Oral Evidence. (i) Justices of the Peace ought to have clearly in mind that in general the law excludes hearsay evidence. A witness must speak of what he has himself seen or heard at the material time and must not give or attempt to give a statement or narrative of facts which he has received from some third person. Hearsay evidence is necessarily untrustworthy. What the other person is alleged to have said was not said on oath

and it cannot in any case be tested by cross-examination. In general, therefore, the law requires that the best evidence—the evidence, for example, of an actual eye-witness—shall be given and that hearsay evidence shall be treated as inadmissible. Accordingly, as a rule, when a witness begins to state something he has been told by a person other than the defendant he should be stopped.

(ii) It is a good working rule, when a witness is giving evidence as to an alleged conversation, to make sure that the defendant was present at the time and heard or was able to hear what was actually said. It should be appreciated that in general a statement made in the absence of the defendant is inadmissible. Clearly, as pointed out in paragraph 16, it would or might be unfair that a defendant should be judged on some statement made in his absence.

(iii) An exception is made in the case of rape or other kindred offences against women or children. In a case of that kind the fact that a complaint was made by the prosecutrix shortly after the alleged occurrence, and the particulars of such complaint may, so far as they relate to the charge against the accused, be given in evidence on the part of the prosecution. Such complaint, however, is not to be regarded as evidence of the facts complained of, but as evidence of the consistency of the conduct of the prosecutrix with the story told by her in the witness-box, and as negativing consent on her part.

69. Documentary Evidence. On the principle

that the best evidence should be available, the general rule is that original documents, and not merely copies, should be produced. There are, however, exceptions to this rule as, for example, in the case of public and judicial documents. But it sometimes happens that an original document which one party desires to put in evidence is in the possession, or was last known to be in the possession, of the other party. In such a case it is open to the party desirous of tendering the document to give the other party notice to produce it. He may then call for the document at the trial, and, if it is not produced, he may put in a copy. Such a copy is termed secondary evidence. Where neither an original document nor a copy is available, and the Court is satisfied that it has been lost or destroyed, oral evidence of the contents may be received. This again is termed secondary evidence.

70. Real Evidence. Material objects, other than documents, which are produced for the inspection of the Court, are sometimes called real evidence. This evidence, unless its genuineness is in dispute, is perhaps the most satisfactory of all. The thing speaks for itself. Thus where a knife is produced with bloodstains upon it the 'exhibit', as it is called, may be regarded as real evidence that it has caused a wound.

71. Direct Evidence. Direct evidence means that a given fact or thing is proved either by the testimony of a person who has himself seen or heard it or by its actual production.

72. Circumstantial Evidence. Circumstantial or indirect evidence means evidence as to surrounding circumstances, sometimes a chain of circumstances, from which the fact in issue may be or is sought to be inferred. The law gives no preference to direct evidence over circumstantial evidence. Familiar forms of circumstantial evidence are the defendant's motive, his preparations, his possession of stolen property, or the condition of his clothing.

Section 2

Evidence must be Relevant

73. In a Magistrates' Court, as in all other Courts of law, the evidence tendered in any given case must be relevant, that is to say, it must directly tend to the proof or disproof of the matter in issue.

74. General Principles. (i) It is not competent for the prosecution to adduce evidence tending to show that an accused person had been guilty of criminal acts other than the act with which he is charged for the purpose of leading to the conclusion that he is a person likely from his conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the Court; and it may be so relevant if it bears upon the question whether the acts alleged to constitute the offence charged were designed or accidental, or to rebut a

defence which would otherwise be open to the accused (*Makin* v. *Att.-Gen. for N. S. W.*, [1894] A.C. 57).

(ii) Evidence is not to be excluded merely because it tends to show an accused person to be of a bad disposition, but only if it shows nothing more; and evidence therefore is admissible of other acts having specific features connecting him with the crime charged, even though that evidence also shows him to be of a bad disposition (*R.* v. *Sims* (1946), 62 T.L.R. 431).

75. Cross-examination as to Character. The general rule is that an accused person who gives evidence on his own behalf is not liable to be cross-examined as to character. But he may be so cross-examined if he has personally or by his advocate asked questions of the witnesses for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or the witnesses for the prosecution, or he has given evidence against any other person charged with the same offence (Criminal Evidence Act, 1898).

Section 3

Evidence in Particular Cases

76. Accomplices. The prosecution may call an alleged accomplice of an accused person to give evidence against him. It has, however, long been

the practice in criminal trials for the Judge to warn the Jury of the danger of convicting a prisoner on the uncorroborated evidence of an accomplice. If a prisoner is convicted and appeals, and it appears that there was no or no sufficient warning, the conviction will generally be quashed.

77. Child of Tender Years. Where in any proceedings against any person for any offence, any child of tender years called as a witness does not, in the opinion of the Court, understand the nature of an oath, his evidence may be received, though not given upon oath, if, in the opinion of the Court, he is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth. But, where such evidence is given on behalf of the prosecution, the accused is not to be liable to be convicted of the offence unless that evidence is corroborated by some other material evidence in support implicating him (Children and Young Persons Act, 1933, s. 38).

78. Confessions. A confession, in order to be admissible, must be free and voluntary. If it proceeds from remorse or a desire to make reparation it is admissible; if it flows from hope or fear excited by a person in authority, it is inadmissible.

79. Doctor and Patient. There is no privilege entitling a medical practitioner to refuse to give evidence as to statements made to him by a patient.

80. Finger-prints. The Court may accept expert evidence of finger-prints though it be the sole ground of identification (*R.* v. *Castleton*, 3 Cr.App.R. 74).

81. Hostile Witness. If a witness proves himself adverse to the party who has called him, the Court may give permission to that party's advocate to cross-examine him. But before that course is taken it must be shown that the witness is adverse in the sense of being hostile and not merely unfavourable.

82. Husband and Wife. (i) Communications between husband and wife during the marriage are privileged from disclosure in evidence.

(ii) The husband or wife of a prisoner is a competent witness for the defence in all criminal cases, but not generally for the prosecution, though there are many exceptions.

(iii) There is a strong presumption that the child of a married woman was begotten by her husband. The fact that the wife had immoral relations with other men is not of itself sufficient to displace the presumption of legitimacy; non-access by the husband at the time when the child must have been begotten must (unless there be incapacity) further be proved. Proof of non-access cannot be given for this purpose either by the husband or by the wife; neither of them can be asked any question tending to prove non-access; it must be established entirely by the evidence of other witnesses (*Russell* v. *Russell*, [1924] A.C. 705).

83. Opinion. The opinion of a witness is inadmissible unless he is an expert giving his opinion on some point of forensic science, or on finger-prints, or handwriting, or other technical matter.

84. Refreshing Memory. A witness may refresh

his memory by referring to a memorandum of the facts, provided it was made by him at or soon after the time of the occurrence in question (*R.* v. *Bryant* (1946), 31 Cr. App. R. 146).

85. Witness who is Dangerously Ill. Provision is made by the Criminal Law Amendment Act, 1867, for a Justice of the Peace to take the statement on oath or affirmation of a witness who is ill. This may be done whenever it is made to appear to his satisfaction that any person is dangerously ill and, in the opinion of some registered medical practitioner, is not likely to recover from such illness and is able and willing to give material information relating to any indictable offence, or relating to any person accused of any such offence, and it is not practicable to take the deposition in the ordinary way. The Justice is to subscribe such statement and add, by way of caption, a statement of his reason for taking it, and of the day and place when and where it was taken and of the names of the persons (if any) present at the taking of it. Reasonable notice in writing must be served upon the person (whether prosecutor or accused) against whom the statement is proposed to be read in evidence, and it must be proved that such person or his counsel or solicitor had, or might have had if he had chosen to be present, full opportunity of cross-examination.

Chapter 5

PROCEDURE IN CRIMINAL CASES

86. Four Categories. From the point of view of procedure, criminal cases in ordinary Magistrates' Courts may be put into four categories :—

(i) Summary Offences which Fall to be Dealt with by the Justices.

(ii) Indictable Offences which may be Dealt with Summarily.

(iii) Cases in which an Accused Person Claims to be Tried by a Jury.

(iv) Indictable Offences which Fall to be Committed for Trial.

Section 1

Summary Offences which Fall to be Dealt with by the Justices

87. Summary Offences. Some hundreds of offences come within the summary jurisdiction of Magistrates' Courts. They include assault, breaches of by-laws, cruelty to animals, disorderly conduct, factory offences, ill-treatment of children, indecency, intoxicating liquor offences, gaming, motoring offences, street betting, some forms of theft and malicious damage, and vagrancy.

88. Procedure. Where a person is charged before the Justices with a summary offence the procedure is as follows :—

(i) The clerk to the Justices informs the defendant of the substance of the information or

complaint and asks him whether he pleads guilty or not guilty.

(ii) If the defendant pleads guilty it is, generally speaking, unnecessary to call witnesses. The usual practice is for the prosecutor or his advocate to state the facts; the defendant or his advocate then addresses the Court in mitigation; and the Bench proceeds to give judgment.

(iii) If the defendant pleads Not Guilty, the prosecutor, by himself or his advocate, proceeds to open his case and to call his witnesses. The examination of each witness is called examination-in-chief. Each may be cross-examined by the defendant or his advocate; and where a witness is cross-examined, he may be re-examined by the prosecutor or his advocate.

(iv) At the close of the case for the prosecution, the defendant, by himself or his advocate, proceeds to open his case and to call his witnesses. Each may be cross-examined by the prosecutor or his advocate; and, where a witness is cross-examined, he may be re-examined by the defendant or his advocate.

(v) The rule with regard to examination-in-chief and also re-examination is that a party may not put leading questions, that is to say, questions which suggest the desired answer. Leading questions may, however, be put in cross-examination.

(vi) It is often convenient for the defendant's advocate to defer his address until after he has called his evidence, and the Court may give

permission for that course to be adopted. Moreover, where the only witness to the facts of the case called by the defence is the person charged, he must be called as a witness immediately after the close of the evidence for the prosecution; and necessarily in such a case the defendant's advocate addresses the Court after the defendant has given evidence.

(vii) There is no right of reply save on a point of law.

89. Decision of Majority. (i) The decision of the Court is in accordance with the opinion of the majority of the Justices sitting and adjudicating. If the Justices are equally divided the chairman has no casting vote. The proper course for the Justices to take if they are equally divided is to adjourn the case in order that a re-hearing may be had before a reconstituted Bench (*Kinnis* v. *Graves* (1898), 67 L.J.Q.B. 583; *Bagg* v. *Colquhoun*, [1904] 1 K.B. 554; 68 J.P. 159).

(ii) It is submitted that where there is a division of opinion there can, in general, be no objection to the disclosure of that fact in the Magistrates' Court, and, in particular, where a defendant has been convicted by the decision of a majority. There may, indeed, be cases where such disclosure may be considered necessary (*R.* v. *Justices of Middlesex*, (1877), 41 J.P. 261). But, inasmuch as the decision of a majority is the decision of the Court, the fact that it is the decision of a majority should never appear in any case stated for the opinion of the High

Court (*Harrow Urban District Council* v. *More O'Ferrall, Ltd.* (1946), 62 T. L. R. 608).

Section 2

Indictable Offences which may be Dealt with Summarily

90. SUMMARY TRIAL OF ADULT. Provision is made for the summary trial of an adult (that is, a person who is of the age of seventeen or upwards) who is charged with one of certain specified indictable offences. In general, the Court may deal summarily with such an offence if it thinks it expedient so to do 'having regard to any representation made in the presence of the accused by or on behalf of the prosecutor, the character and antecedents of the accused, the nature of the offence, the absence of circumstances which would render the offence one of a grave or serious character, and all the other circumstances of the case (including the adequacy of the punishment which a Court of Summary Jurisdiction has power to inflict), and if the accused, when informed by the Court of his right to be tried by a Jury, consents to be dealt with summarily' (statute: Criminal Justice Act, 1925, s. 24).

91. PROCEDURE. (i) If the Court at any time during the hearing of a charge for such an indictable offence becomes satisfied that it is expedient to deal with the case summarily it must—

(i) cause the charge to be reduced into writing and read to the accused;

(ii) address to him a question to the following

effect, '*Do you desire to be tried by a jury, or do you consent to the case being dealt with summarily?*', with a statement, if the Court thinks such a statement desirable for his information, of the meaning of the case being dealt with summarily, and of the Assizes or Quarter Sessions, as the case may be, at which he will be tried.

(ii) If the accused consents to be dealt with summarily, the Court must forthwith ask him the following question, '*Do you plead guilty or not guilty?*'.

(iii) Summary procedure becomes applicable as soon as it is decided to try the case summarily.

Section 3

Cases in which an Accused Person Claims to be Tried by a Jury

92. Except in the case of an alleged assault, a person when charged with an offence in respect of the commission of which an offender is liable on summary conviction to be imprisoned for a term exceeding three months may, on appearing before the Court and before the charge is gone into, but not afterwards, claim to be tried by a Jury. Thereupon the Court must deal with the case in all respects as if the accused were charged with an indictable offence (statute: Summary Jurisdiction Act, 1879, s. 17).

93. In such a case the Court, before the charge is gone into, for the purpose of informing the defendant

of his right to be tried by a Jury, must address him to the following effect: ' *You are charged with an offence in respect of the commission of which you are entitled, if you desire it, instead of being dealt with summarily, to be tried by a jury; do you desire to be tried by a Jury?* ', with a statement if the Court thinks such statement desirable for the information of the person to whom the question is addressed of the meaning of being dealt with summarily, and of the Assizes or Sessions (as the case may be) at which such person will be tried if tried by a Jury.

Section 4

Indictable Offences which Fall to be Committed for Trial

94. QUESTION OF COMMITTAL. (i) Where a person is brought before a Magistrates' Court charged with an indictable offence there is what is called a preliminary examination. It is held by an examining Justice or Justices, and its purpose is not to decide the guilt or innocence of the accused but to inquire whether he ought or ought not to be committed for trial.

(ii) The question of committal depends upon whether, in the opinion of the examining Justice or Justices, there is or is not a *prima facie* case. The test of a *prima facie* case, as indicated in paragraph 19, is whether the evidence is such that, if uncontradicted and if believed, it will be sufficient to prove the charge against the accused.

95. No Plea by the Accused. The proceedings before an examining Justice or Justices differ from the hearing of a charge in summary proceedings. At the outset the charge may be read over to the accused—in Metropolitan Courts it is not the practice to read the charge over to the accused until he is about to be committed for trial—but he is not asked whether he is guilty or not guilty. It is usual for the prosecutor, by himself or his advocate, to open the case, and the witnesses are then called.

96. Depositions. (i) The witnesses make their statements on oath or affirmation in the presence of the examining Justice or Justices and of the accused. The accused, by himself or his advocate, has the right to cross-examine any witness, and the prosecutor, by himself or his advocate, is entitled to re-examine.

(ii) The statements of the witnesses must be put into writing, and they are then known as depositions. The examining Justice or Justices must, as soon as may be after the examination of each witness for the prosecution has been concluded, cause the deposition of that witness to be read to him in the presence and hearing of the accused, and must cause him to sign the deposition, and must forthwith bind him over to attend the trial.

97. Explanation of the Charge. (i) Immediately after the last witness for the prosecution has been bound over to attend the trial, the examining Justices must read the charge to the accused and explain its nature to him in ordinary language, and

inform him that he has the right to call witnesses and, if he so desires, to give evidence on his own behalf. After so doing, the examining Justices must then address to him the following words or words to the like effect :—

' Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so, but whatever you say will be taken down in writing and may be given in evidence upon your trial.'

(iii) Before the accused makes any statement in answer to the charge, the examining Justices must state to him, and give him clearly to understand, that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been held out to him to induce him to make any admission or confession of his guilt, but that whatsoever he then says may be given in evidence on his trial notwithstanding the promise or threat.

(iv) Whatever the accused states in answer to the charge must be taken down, read over to him and signed by the examining Justices and also, if the accused so desires, by him, and must be transmitted to the Court of trial with the depositions of the witnesses.

98. Evidence for Accused. (i) Immediately after complying with the requirements relating to the statement of the accused, and whether he has or has not made a statement, the examining Justices must ask him whether he desires to give evidence on his

own behalf and whether he desires to call witnesses. If the accused states that he wishes to give evidence, but not to call witnesses, the Justices must proceed to take forthwith the evidence of the accused. After the conclusion of the evidence of the accused, his advocate must be heard on his behalf if he so desires.

(ii) If the accused states that he desires to give evidence on his own behalf and to call witnesses, or to call witnesses only, the Justices must either forthwith, or after his advocate has addressed them, take the evidence of the accused, if he wishes to give evidence himself, and of any witness called by him.

(iii) All statements made by the accused and all evidence given by him or any such witness (not being a witness merely to the character of the accused) must be taken down in writing and transmitted to the Court of trial, together with the depositions of the witnesses for the prosecution. The evidence of witnesses for the defence must be read over and signed, and such witnesses (except in the case of a witness merely to the character of the accused) must be bound over as in the case of witnesses for the prosecution.

99. Justices' Decision. (i) Before determining whether they will or will not commit an accused person for trial the examining Justices must take into consideration his statement or any such evidence as is given by him or his witnesses.

(ii) Where the Justices are equally divided in opinion as to whether or not an accused person shall be committed for trial, they have power to adjourn

the inquiry for re-hearing before a differently constituted tribunal (*R.* v. *Hertfordshire Justices, ex p. Larsen*, [1926] 1 K.B. 191).

100. SIGNATURE OF JUSTICES. The signature of a committing Justice need not be subscribed to the deposition of each witness respectively. It is sufficient if it be attached at the conclusion of the depositions of the several witnesses.

Chapter 6

GRANTING OF BAIL

101. Power of Police. (i) A superintendent or inspector of police, or other officer of equal or superior rank, or in charge of a police station, is empowered to release a person taken into custody without a warrant, on his entering into a recognisance, unless the alleged offence appears to be of a serious nature (statute: Summary Jurisdiction Act, 1879, s. 38).

(ii) There is a similar provision in the case of a person apparently under the age of seventeen years who is apprehended, with or without warrant, and cannot be brought forthwith before a Court of Summary Jurisdiction. In such a case the officer must release the person apprehended unless—

(a) the charge is one of homicide or other grave crime; or

(b) it is necessary in his interest to remove him from association with any reputed criminal or prostitute; or

(c) the officer has reason to believe that his release would defeat the ends of justice.

(Children and Young Persons Act, 1933, s. 32.)

102. Endorsement on Warrant. A Justice of the Peace, on issuing a warrant for the arrest of any person, may, if he thinks fit, by endorsement on the

warrant, direct that the person named in it be on arrest released on his entering into such a recognisance, with or without sureties, for his appearance as may be specified in the endorsement (statute: Criminal Justice Administration Act, 1914, s. 21).

103. Summary Proceedings. (i) In summary proceedings where the hearing is adjourned, the Justices may, in their discretion, grant or refuse bail to the defendant.

(ii) Bail should be granted unless good cause is shown to the contrary, as, for example, that there are grounds for believing that the alleged offender may abscond or attempt to tamper with witnesses.

(iii) The defendant may be given continuous bail. If he is prevented by illness or accident from appearing personally, the Justices may further remand him in his absence (statute: Criminal Justice Administration Act, 1914).

104. Appeals to Quarter Sessions. The Justices may grant bail to an appellant who is in custody pending an appeal to Quarter Sessions (statute: Summary Jurisdiction Act, 1879, s. 31, as re-enacted by the Summary Jurisdiction (Appeals) Act, 1933).

105. Case Stated. Where the Justices agree to state a case for the determination of the High Court of Justice on a point of law, they may grant bail to an appellant who is in custody to abide such judgment (statute: Summary Jurisdiction Act, 1857, s. 3).

106. Indictable Offences. (i) No person can be admitted to bail in a case of treason except by order

of one of the Secretaries of State or by the King's Bench Division of the High Court of Justice or a Judge of such Division in Vacation.

(ii) In all other cases the Justices may admit the accused to bail, either during remand or to appear at the Court at which his trial is to take place; but it is not usual to grant bail in cases of murder, nor in cases of attempted murder, unless the prosecution consents. (statute: Indictable Offences Act, 1848, s. 23).

(iii) Where a person charged with a misdemeanour is committed for trial without bail the Justices must inform him of his right to apply to the High Court (statute: Criminal Justice Administration Act, 1914, s. 28).

(iv) If an accused person is not granted bail when he is committed for trial he may be admitted to bail at any time afterwards before the first day of the sitting or session at which he is to be tried (statute: Indictable Offences Act, 1848, s. 23).

107. Application to Judge in Chambers. (i) If the Justices on or after commitment and before trial refuse to grant bail, an application for bail may be made to a Judge in Chambers in the King's Bench Division of the High Court of Justice.

(ii) A Judge of the King's Bench Division has no inherent jurisdiction to grant bail to a convicted person (*Ex p. Blyth*, [1944] 1 K.B. 582; 171 L.T. 283).

(iii) Further, a Judge of the King's Bench Division has no inherent jurisdiction to grant bail,

pending an appeal to Quarter Sessions, to a person committed in execution by a Magistrates' Court, and has no jurisdiction to reduce the amount where the Justices, in the exercise of their statutory powers, have fixed bail in a specified sum (*Ex p. Speculand*, [1946] 1 K.B. 48).

Chapter 7

POOR PRISONERS' DEFENCE ACT, 1930

108. Two Kinds of Certificates. As a rule, justice does not manifestly and undoubtedly seem to be done when in a criminal case the prosecution is legally represented and the prisoner is not. So it is that provision is made in appropriate cases for the defence of prisoners by the Poor Prisoners' Defence Act, 1930. Under this Act certificates of two kinds are granted :—

(a) Legal Aid Certificates.

(b) Defence Certificates.

109. Legal Aid Certificates. (i) These certificates are granted in respect of proceedings before Magistrates' Courts, that is to say, in respect of cases which are dealt with by the Justices and also those when the Justices are acting as examining Justices with a view to committing for trial at Quarter Sessions or Assizes.

(ii) Justices are authorised by section 2 of the Act to grant a Legal Aid Certificate if it appears to them that the means of any person charged before them with any offence are insufficient to enable him to obtain legal aid, and that, by reason of the gravity of the charge or of exceptional circumstances, it is desirable in the interests of justice that he should have free legal aid in the preparation and conduct of his defence before them.

(iii) On the Justices granting a Legal Aid Certificate, the prisoner is entitled to have a solicitor and (where he is charged with murder and the Justices think fit) counsel assigned to him.

110. Defence Certificates. (i) These certificates are granted under section 1 of the Act in respect of persons committed for trial at Quarter Sessions or Assizes.

(ii) Such a person may be granted a Defence Certificate by the Justices on his being committed for trial, and thereupon he is entitled to have solicitor and counsel assigned to him for the preparation and conduct of his defence at the trial.

(iii) A Defence Certificate is not to be granted in respect of any person unless it appears that his means are insufficient to enable him to obtain legal aid. But, where it appears that his means are insufficient, the Justices

(a) must grant a Defence Certificate in respect of any person committed for trial upon a charge of murder; and

(b) may grant a Defence Certificate in respect of any person committed for trial upon any other charge if it appears, having regard to all the circumstances of the case (including the nature of such defence, if any, as may have been set up) that it is desirable in the interests of justice that he should have legal aid in the preparation and conduct of his defence at the trial.

111. Counsel and Solicitors. (i) In accordance

with the Poor Prisoners (Counsel and Solicitor) Rules, 1931, every Clerk of Assize and Clerk of the Peace keeps a list of solicitors and counsel willing to undertake the defence of poor prisoners, and a copy is supplied to every Clerk to Justices in the district. In assigning a solicitor, the Justices take into consideration any representations which the prisoner may make. When counsel has also been assigned the solicitor may instruct any member of the Bar whose name appears on the list.

(ii) Where the charge is one of murder, or the case appears to present exceptional difficulty, the Justices, in granting a Defence Certificate, may certify that in their opinion the interests of justice require that the prisoner shall have the assistance of two counsel.

112. Payment of Fees. The fees payable under the Poor Prisoners' Defence Act are paid from the county fund, or, in a county borough, the general rate fund.

118. Use of the Act. It may be pointed out that the Committee on Legal Aid and Legal Advice in England and Wales, whose Report was presented to Parliament in May, 1945, expressed the view that the spirit of the Act should always be carried out, and a more generous use of the Act should be made. They recommended that any doubt as to whether or not a certificate should be granted should be resolved in favour of the applicant.

Chapter 8

PROBATION AND PUNISHMENT

Section 1

Development of Probation

114. Origin of Probation. The probation system as it exists in England and Wales to-day appears to have had its origin in what was known in other countries towards the end of last century as the suspended sentence. The idea was that in an appropriate case, where a person had been convicted of an offence, the sentence should be determined upon, but its operation should be suspended to enable the offender to make a serious effort to redeem his character. During the period of suspension it was necessary that there should be reliable information regarding his progress, and this was furnished by a responsible official, the forerunner of the modern Probation Officer. If the information available justified that course, the sentence was eventually cancelled.

115. How it Began in England. There is, however, good reason to believe that the probation system in this country owes its inception in part to the kindly concern which a working printer, Mr. Frederick Rainer, showed in 1876 for the man who, having once got into trouble, was in danger of taking a downward path, without any agency to stretch out

a helping hand. Mr. Rainer wrote to the head office of a society of the Church of England expressing the hope that it might be possible to organise some practical work in the Police Court and enclosing a money order for five shillings as a nucleus of a fund for this purpose. The society proceeded to appoint agents, afterwards called Police Court Missionaries, and it was from the ranks of these that the first Probation Officers were eventually drawn.

116. First Statutory Recognition. Probation may be said to have received its first statutory recognition in this country in 1879, when, under section 16 of the Summary Jurisdiction Act, power was given to a Magistrates' Court to discharge an offender without proceeding to conviction or, on convicting him, to discharge him conditionally on his giving security to appear for sentence when called upon, or to be of good behaviour. In 1887 there was passed an Act having for its object the reformation of persons convicted of first offences, called the Probation of First Offenders Act. These statutory provisions were repealed by the Probation of Offenders Act, 1907. This Act provides Justices with three methods of dealing with a case:—

(a) To dismiss the charge, although they think it is proved.
(b) To bind over the offender without supervision.
(c) To place the offender on probation with supervision.

The substance of the Act is set out in Section 2 of this Chapter.

117. Growth of the System. The growing value of the probation system is shown by the extent to

which it is now being used by the Courts. In 1944 the number of persons found guilty of indictable offences (*i.e.*, the more serious offences) was 107,155, and of these no fewer than 49,207 were dealt with under the Probation of Offenders Act. In the ordinary Courts of Summary Jurisdiction, 55,883 persons, aged seventeen and over, were found guilty of indictable offences, and in 8 per cent. of these cases the charge was dismissed after it had been found proved, 9 per cent. of the persons were bound over without supervision, and 11 per cent. were placed on probation with supervision. As regards persons under the age of seventeen, the number found guilty of indictable offences was 40,121, and in 24 per cent. of these cases the charge was dismissed after it had been found proved, 6 per cent. of the persons were bound over without supervision, and 45 per cent. were bound over with supervision. At Courts of Quarter Session, 7,148 persons were convicted, and of these 14 per cent. were placed on probation with supervision and 22 per cent. were bound over without supervision. Of the 4,003 persons convicted of indictable offences by the Assize Courts, 17 per cent. were bound over without supervision and 6 per cent. were placed on probation with supervision.

Section 2

Probation of Offenders Act, 1907

118. Dismissal or Conditional Release. Section 1 (1) of the Probation of Offenders Act, 1907,

provides that where any person is charged before a Court of Summary Jurisdiction with an offence punishable by such Court, and the Court thinks that the charge is proved, but is of opinion that, having regard to

> the character, antecedents, age, health or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed,

it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, without proceeding to conviction, make an Order either:—

> (i) dismissing the information or charge; or
>
> (ii) discharging the offender conditionally on his entering into a recognisance, with or without sureties, to be of good behaviour and to appear for conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the Order.

119. Probation Orders. (i) A recognisance ordered to be entered into under the Probation of Offenders Act will, if the Court so orders, contain (a) a condition that the offender be under the supervision of such person as may be named in the Order during a specified period, and (b) such other conditions for securing such supervision as may be specified. An Order requiring the insertion of such conditions in the recognisance is referred to as a Probation Order.

(ii) A recognisance under the Act may contain such additional conditions with respect to residence, abstention from intoxicating liquor, and any other

matters, as the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

120. Damages and Costs. Where it makes an Order under section 1 (1) of the Act, the Court may further order that the offender shall pay such costs of the proceedings, or such damages for injury or compensation for loss (not exceeding in the case of a Court of Summary Jurisdiction £25, or, if a higher limit is fixed by an enactment relating to the offence, a higher limit) as the Court thinks reasonable, or both such costs and damages or compensation.

121. Probation Areas. (i) In general, every Petty Sessional Division is a probation area for the purposes of the Probation of Offenders Act. The Home Secretary may, however, if he thinks it desirable to do so, with a view to securing the more effective operation of the law relating to the probation of offenders, direct that two or more Petty Sessional Divisions shall be combined to form a probation area.

(ii) Of the 1,023 Petty Sessional Divisions in England and Wales, 242 are single probation areas and 781 have been formed into 50 combined probation areas.

122. Probation Committees. (i) There is a Probation Committee for every Petty Sessional Division, whether a probation area or not, and for every combined area.

(ii) The Justices acting in and for every Petty

Sessional Division, whether forming a single area or forming part of a combined area, appoint a Committee of their number to act as the Probation Committee for the Division.

123. PROBATION OFFICERS. (i) One or more Probation Officers is or are appointed for every probation area.

(ii) It is the duty of a Probation Officer to undertake the supervision of a person in respect of whom supervision is required by a Probation Order, and, in particular, subject to the directions of the Court:—

(a) to visit or receive reports from a person under supervision at such reasonable intervals as may be specified in the Probation Order, or, subject thereto, as the Probation Officer may think fit;

(b) to endeavour to ensure that he observes the conditions of his recognisance;

(c) to report to the Court and the Probation Committee as to his behaviour;

(d) to advise, assist and befriend him, and, when necessary, to endeavour to find him suitable employment.

(iii) It is the duty of the Probation Committee of a probation area to supervise the work and receive the reports of Probation Officers.

(iv) In the case of a combined area, the duty of supervising the work and receiving the reports of Probation Officers is performed by the Probation Committees of the several Petty Sessional Divisions

comprised in the area instead of by the Probation Committee for the area.

(v) There are at present 800 full-time Probation Officers (518 men and 282 women) and 258 part-time Officers.

124. Provision for Investigation. It is considered that the success of the probation system depends in some measure on the selection by the Court of suitable cases which are likely to respond to this form of treatment. Provision is therefore made for an investigation by a Probation Officer before the Justices come to a decision in any given case. Rule 37 of the Probation Rules, 1926, provides that a Probation Officer shall make such preliminary inquiries, including inquiries into the home surroundings, as the Court may direct in respect of any offender in whose case the question of the making of a Probation Order may arise.

125. Variation of Conditions. The Court before which any person is bound by a recognisance under the Probation of Offenders Act to appear for conviction and sentence, or for sentence :—

(a) may at any time if it appears to it, upon the application of the Probation Officer, that it is expedient that the terms or conditions of the recognisance should be varied, summon the person bound by the recognisance to appear before it, and, if he fails to show cause why such variation should not be made, vary the terms of the recognisance by extending or

diminishing its duration (so, however, that it shall not exceed three years from the date of the original order), or by altering its conditions, or by inserting additional conditions; or

(b) may, on application being made by the Probation Officer, and on being satisfied that the conduct of the person bound by the recognisance has been such as to make it unnecessary that he any longer be under supervision, discharge the recognisance.

126. Breach of Recognisance. (i) If the Court before which an offender is bound by his recognisance to appear for conviction or sentence, or any Court of Summary Jurisdiction, is satisfied by information on oath that he has failed to observe any of the conditions of his recognisance, it may issue a warrant for his apprehension, or may, if it thinks fit, issue a summons to the offender and his sureties (if any) requiring him or them to attend at such Court and at such time as may be specified in the summons.

(ii) A Court before which a person is bound by his recognisance to appear for conviction and sentence, on being satisfied that he has failed to observe any condition of his recognisance, may forthwith, without further proof of his guilt, convict and sentence him for the original offence, or if the case was one in which the Court had power to make an order sending him to an approved school, and he is still under the age of seventeen years, make such an Order.

Section 3

The Problem of Punishment

127. As indicated in paragraph 18, the real object of punishment is the prevention of crime. Thus it is intended to have a two-fold effect:—

(i) to prevent an offender from repeating his offence;

(ii) to deter other members of the community from committing similar offences.

128. THREE METHODS. The subject has been discussed by many writers on jurisprudence as well as by criminologists. For example, Jeremy Bentham (1748–1832) suggested that there are three ways of providing by punishment against an offender repeating his offence—

(i) By taking from him the power of offending—Incapacitation.

(ii) By taking away the desire of offending—Reformation.

(iii) By making him afraid of offending—Intimidation.

129. MATTERS TO BE CONSIDERED. (i) But punishment is not a matter to be considered merely in the light of abstract principles. As pointed out in paragraph 3 (ii), no two cases are necessarily alike, and punishment, if any, ought not to be stereotyped.

(ii) As regards the offender himself, amongst the matters which Justices ought to take into account are his age, his record—whether his character is good or otherwise—whether the act in question was

accompanied by any extenuating or aggravating circumstances, the punishment which he may already have suffered as a result of the proceedings, and the consequences, ascertained or anticipated, of a sentence of imprisonment.

(iii) As regards other members of the community being deterred from committing similar offences, Justices ought to take into account the extent of the evil likely to result from acts of the class in question, and whether such acts are prevalent or not in their area. Care must, however, be taken to see that a prisoner is not made the scapegoat of other people who have committed similar crimes but have not been caught and convicted.

130. Police Evidence after Conviction. When a police officer is called to give evidence about a prisoner who has been convicted, he should in general limit himself to such matters as the previous convictions, if any, and the antecedents of the prisoner, including anything which has been ascertained about his home and upbringing in cases where the age of the prisoner makes this information material. It is the duty of the police officer to inform the Court also of any matters, whether or not the subject of charges which are to be taken into consideration, which he believes are not disputed by the prisoner and ought to be known by the Court. Police officers should inform the Court of anything in the prisoner's favour which is known to the police, such as periods of employment and of good conduct. It is the duty of the advocate for the prosecution to see that a police

witness, when speaking on all these matters, is kept in hand and is not allowed, much less invited, to make allegations which are incapable of proof and which he has reason to think will be denied by the prisoner (*R.* v. *Van Pelz*, [1943] 1 K.B. 157; 107 J.P. 24).

131. Plea in Mitigation. Justices should be ready to listen to any plea in mitigation of sentence which the prisoner or his advocate may be desirous of making.

132. Sentences in Magistrates' Courts. The term of imprisonment, if any, which Justices can impose in any given case is regulated by the precise powers conferred upon them. With regard to those powers Justices should be guided by their Clerks. There are some offences in respect of which a maximum sentence of twelve months imprisonment may be imposed. There are a few relating to Customs and Excise (set out in section 12 of the Finance Act, 1943), in respect of which a maximum sentence of two years imprisonment may be imposed, in addition to ordering the offender to pay a penalty.

133. Fines. (i) A fine, either with or without imprisonment, is a punishment for a common law misdemeanour. In certain cases also it is a statutory punishment which may be imposed in addition to, or instead of, imprisonment.

(ii) In fixing the amount of any fine to be imposed

on an offender a Magistrates' Court is to take into consideration, amongst other things, the means of the offender so far as they appear or are known to the Court; and, where a fine is imposed, the payment of the Court fees and police fees payable in the case up to and including conviction are not to be taken into consideration in fixing the amount of the fine or be imposed in addition to the fine.

(iii) There is an obligation to allow time for the payment of a fine unless the Court is satisfied that the offender is possessed of sufficient means to enable him to pay the sum forthwith, or unless, upon being asked by the Court whether he desires that time be allowed for payment, he does not express any such desire, or fails to satisfy the Court that he has a fixed abode, or unless the Court for any other special reason expressly directs that no time shall be allowed (Criminal Justice Administration Act, 1914, s. 1).

(iv) The Money Payments (Justices Procedure) Act, 1935, contains provisions for an inquiry into the means of a person to whom time has been allowed for the payment of a fine and who has made default.

Section 4

Prisons and Borstal Institutions

134. Simple Imprisonment. For some time before February, 1945, a sentence of imprisonment with hard labour meant in the case of a male prisoner

over sixteen and under sixty years of age that he was not allowed a mattress during the first fourteen days of his sentence unless the medical officer otherwise ordered. That rule was revoked by the Prison Rules, 1945, and accordingly the position now is that only one form of sentence is necessary in a Magistrates' Court—simple imprisonment.

135. Treatment of Prisoners. (i) In June, 1945, the Home Office issued a pamphlet, ' Prisons and Borstals ', containing a statement of policy and practice in the administration of Prisons and Borstal Institutions in England and Wales.

(ii) It was pointed out in this pamphlet that the basic problem of prison administration is ' to devise methods of treating prisoners which, on the one hand, will " effectually . . . turn them out of prison better men and women . . . than when they came in ", and, on the other, can be reconciled with the facts that the prisoner has been sent to prison as a punishment for an offence, and that the intention of the Court in awarding that punishment is to deter both that offender and all potential offenders from committing further offences of that sort. To effect this reconciliation, it is necessary to make the assumption that the deterrent force of the punishment lies primarily in the shame of being sent to prison and the fact of being in prison, with all that that fact in itself implies—complete loss of personal liberty, separation from home, family and friends, subjection to disciplinary control and forced labour,

and deprivation of most of the ordinary amenities and intercourse of everyday life '.

(iii) The regime is therefore directed towards the idea of training and not towards that of punishment. ' Useful and productive work replaces " hard labour "; for suitable classes of prisoner the attempt is made to build up character through trust leading to responsibility; and moral and mental stimulus to right thinking and right feeling is provided by the work of the Chaplains, the encouragement of good reading, the provision of evening classes in education, and the extension of contacts with the normal world outside through the voluntary Prison Visitors, the wireless and the Press.'

136. Borstal Treatment. (i) The system of training under detention for young offenders in Borstal Institutions was set up by the Prevention of Crime Act, 1908. ' The object of the system is the all-round development of character and capacities—moral, mental, physical and vocational—with particular emphasis on the development of responsibility and self-control through trust increasing with progress.' The elements of training are the same in all Institutions—' a long hard day of useful and interesting work in a workshop or on the land, regular physical training, and an active evening, with educational or handicraft classes, or gymnastics, but with one quiet hour for reading and writing, and a reasonable time for play '.

(ii) In the case of a person of not less than sixteen

nor more than twenty-one years of age who is summarily convicted of any offence for which the Court has power to impose a sentence of imprisonment for one month or upwards without the option of a fine, it is lawful for the Justices to commit the offender to prison until the next Assizes or Quarter Sessions if (a) it is proved that he has previously been convicted of any offence, or, that having been previously discharged on probation he failed to observe a condition of his recognisance, and (b) it appears that by reason of criminal habits, tendencies or associations it is expedient that he should be subject to corrective detention. The Court of Assize or Court of Quarter Sessions, after inquiry, must pass a sentence of detention in a Borstal Institution or deal with the case in any way in which the Magistrates' Court might have dealt with it.

(iii) In the case of a prisoner between twenty-one and twenty-three years of age charged with an indictable offence who is considered suitable for Borstal treatment, the proper course for Justices to take is to commit him for trial and not deal with him summarily.

(iv) Justices may commit direct to a Borstal Institution for two years a young person who has escaped from or failed to return to or been guilty of serious misconduct in an approved school if he has attained the age of sixteen years (Children and Young Persons Act, 1933, s. 82, and Fourth Schedule, para. 8). Approved schools are dealt with in paragraph 150.

Section 5

Sentences and Penalties

137. THREE TABLES. Appended are three tables which may be useful to Justices and others. The first is a table showing the maximum punishment which may be imposed for a first offence in respect of certain selected offences; the second is a table showing the maximum period of imprisonment which may be imposed in respect of the non-payment of a sum adjudged to be paid by a conviction, as laid down by section 5 of the Summary Jurisdiction Act, 1879; and the third is a table showing the maximum period of imprisonment which may be imposed in respect of the non-payment of a sum adjudged to be paid by a conviction under or by virtue of any statute relating to His Majesty's revenue under the control of the Commissioners of Customs and Excise, as laid down by section 12 of the Finance Act, 1943.

TABLE I

PUNISHMENTS FOR SOME OFFENCES

The following table shows the maximum punishment, whether a term of imprisonment or a fine, which may be imposed for a first offence in respect of certain selected offences:—

ALIENS	
Contravention of Aliens Order, 1920	Fine not exceeding £100 or imprisonment not exceeding six months. Articles in the possession of an offending alien may also be forfeited (Aliens (No. 3) Order, 1940).
ANIMALS (PROTECTION OF)	
Cruelty	Fine not exceeding £25, or alternatively, or in addition thereto, imprisonment for any term not exceeding three months (Protection of Animals Act, 1911, s. 1, as amended by the Protection of Animals Act (1911) Amendment Act, 1912).

ASSAULT

Common assault	Imprisonment not exceeding two months or a fine not exceeding £5, in addition to any costs which the Court may order the offender to pay (Criminal Justice Act, 1925, s. 39 (1)).
Aggravated, on female, or male child under 14	Imprisonment not exceeding six months or a fine not exceeding £50, in addition to any costs which the Court may order the offender to pay (Criminal Justice Act, 1925, s. 39 (2)).
On any constable when in the execution of his duty	Six months imprisonment, or a fine not exceeding £20 (Prevention of Crimes Act, 1871, s. 12).

CHILDREN AND YOUNG PERSONS	
Cruelty to persons under sixteen	A fine not exceeding £25, or alternatively, or in default of payment, or in addition, imprisonment for any term not exceeding six months (Children and Young Persons Act, 1933, s. 1).
CUSTOMS	
False declarations	£500 and two years imprisonment (Customs Consolidation Act, 1876, s. 168; Finance (No. 2) Act, 1915, s. 16, and Finance Act, 1943, s. 12).
DANGEROUS DOG	
Not keeping under proper control	20s. per day for each day owner fails to comply with order of Court (Dogs Act, 1871, s. 2).
FACTORIES OFFENCES	
Failure to fence machinery securely	£20 (Factories Act, 1937, s. 131).
Fine in case of death or injury	£100 (Factories Act, 1937, s. 133).

FOOD AND DRUGS	
Selling to prejudice of purchaser	£20 (Food and Drugs Act, 1938, ss. 3 and 79).
Sale of unsound food ...	£50 or three months, or both (Food and Drugs Act, 1938, s. 9).
GAMING-HOUSE	
Keeping	£100 or six months (Gaming Act, 1845, s. 4).
do.	£500 or twelve months (Gaming Houses Act, 1854, s. 4).
INFANTS	
Inciting to borrow money	One month or a fine of £20, or both (Betting and Loans (Infants) Act, 1892, s. 2).

INTOXICATING LIQUOR LAWS	
Drunk in highway or other public place or licensed premises ...	10s. (Licensing Act, 1872, s. 12).
Drunk and disorderly ...	40s. or one month (Licensing Act, 1872, s. 12).
Drunk while in charge of child under seven ...	40s. or one month (Licensing Act, 1902, s. 2).
Supplying liquor in unregistered club	One month or a fine of £50, or both (Licensing (Consolidation) Act, 1910, s. 93).
LARCENY	
Stealing dog	Six months or forfeiture (above the value of the dog) or not exceeding £20 (Larceny Act, 1861, s. 18).
Stealing any fruit or vegetable production in a garden	Six months or not exceeding £20 above value or amount of injury (Larceny Act, 1861, s. 36).

ROAD TRAFFIC

Causing or permitting vehicle to be on road at night without lights ...	£5 (Road Transport Lighting Act, 1927, ss. 1 and 10).
Driving motor vehicle without licence	£20 (Road Traffic Act, 1930, ss. 4 and 113).
Exceeding speed limit ...	£20 (Road Traffic Act, 1930, s. 10).
Reckless or dangerous driving	£50 or four months. Licence to be endorsed (Road Traffic Act, 1930, s. 11).
Careless driving	£20 (Road Traffic Act, 1930, s. 12).
Driving when under influence of drink ...	£50 or four months. Disqualification for holding licence unless Court for special reasons orders otherwise (Road Traffic Act, 1930, s. 15).

Taking motor vehicle without owner's consent	Three months or £50 (Road Traffic Act, 1930, s. 28).
Use of uninsured motor vehicle	£50 or three months, or both. Disqualification for holding licence unless Court for special reasons orders otherwise (Road Traffic Act, 1930, s. 35).
Neglecting traffic directions	£20 (Road Traffic Act, 1930, s. 49).
Leaving vehicle in dangerous position ...	£20 (Road Traffic Act, 1930, s. 50).
SCHOOL	
Failure of registered pupil to attend regularly	£1 fine on parent (Education Act, 1944, ss. 39 and 40).
STREET BETTING	
Frequenting or loitering in streets or public places	£10 and forfeiture of books, cards, papers, etc. (Street Betting Act, 1906, s. 1).

VACCINATION

Neglecting to cause child to be vaccinated	20s. (Vaccination Act, 1867, s. 29, and Vaccination Act, 1898, Sched.).

VAGRANTS

Begging	14 days (one Justice), one month) (two Justices) (Vagrancy Act, 1824, s. 3; Summary Jurisdiction Act, 1879, s. 20).
Loitering with intent to commit a felony	Three months (Vagrancy Act, 1824, s. 4).

WEIGHTS AND MEASURES

Obstructing inspector ...	£5 (Sale of Food (Weights and Measures) Act, 1926, s. 11).
Not keeping suitable weighing machine for weighing bread	£5 (ditto).

TABLE II

IMPRISONMENT FOR NON-PAYMENT

The period of imprisonment that may be imposed in respect of the non-payment of any sum adjudged to be paid by a conviction (offences relating to Customs and Excise are referred to in Table III) is to be such period as, in the opinion of the Court, will satisfy the justice of the case, but is not to exceed in any case the maximum fixed by the following scale :—

Where the Amount of the Sum or Sums Adjudged to be Paid by a Conviction	The Period is not to Exceed
Does not exceed 10s.	Seven days
Exceeds 10s. but does not exceed £1 ..	Fourteen days
Exceeds £1 but does not exceed £5 ..	One month
Exceeds £5 but does not exceed £20 ..	Two months
Exceeds £20	Three months

TABLE III

IMPRISONMENT FOR NON-PAYMENT IN CUSTOMS AND EXCISE CASES

The maximum period of imprisonment that may be imposed in respect of the non-payment of a sum adjudged to be paid by a conviction under or by virtue of any statute relating to His Majesty's revenue under the control of the Commissioners of Customs and Excise is to be fixed in accordance with the following scale :—

Where the Amount of the Sum Adjudged to be Paid by the Conviction	The Period is not to Exceed
Exceeds £50 but does not exceed £100 ..	Six months
Exceeds £100 but does not exceed £250 ..	Nine months
Exceeds £250	Twelve months

Chapter 9

JUVENILE COURTS

Section 1

Principles to be Observed

138. Specially Qualified Justices. During the present century—beginning in 1901 with the Youthful Offenders Act—the Legislature has recognised in an increasing measure the need for ensuring that the cases of juveniles who are alleged to have transgressed the law or to be exposed to moral danger shall receive special consideration. For these there are special courts called Juvenile Courts, each with its panel of Justices specially qualified for dealing with juvenile cases; and these Courts have their own special rules of procedure. Three classes of juveniles are brought before these Courts by virtue of the Children and Young Persons Act, 1933:—

(i) Juveniles charged with offences.

(ii) Children (i.e., persons under the age of fourteen years) and Young Persons (i.e., persons who have attained the age of fourteen years and are under the age of seventeen years) in need of care or protection.

(iii) Refractory Children and Young Persons.

139. Welfare of Juveniles. The principles to be observed by all Courts in dealing with children and young persons are these:—

(i) Every Court in dealing with a child or young person who is brought before it, either as being in

need of care or protection or as an offender or otherwise, is to have regard to the welfare of the child or young person, and is, in a proper case, to take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.

(ii) A Court is not to order a child under the age of ten years to be sent to an approved school unless for any reason, including the want of a fit person of his own religious persuasion who is willing to undertake the care of him, the Court is satisfied that he cannot suitably be dealt with otherwise.

140. Sittings of Courts. Provision is made for a Juvenile Court to sit in a different building or room from that in which sittings of Courts other than Juvenile Courts are held, or on different days from those on which sittings of such other Courts are held. No person is to be present at any sitting of a Juvenile Court except:—

(a) Members and officers of the Court;

(b) Parties to the case before the Court, their solicitors and counsel, and witnesses and other persons directly concerned in that case;

(c) *Bona fide* representatives of newspapers or news agencies;

(d) Such other persons as the Court may specially authorise to be present.

Section 2

Juveniles Charged with Offences

141. RULES OF PROCEDURE. The procedure to be followed in the case of a child or young person brought before a Court charged with an offence is laid down in Part I of the Summary Jurisdiction (Children and Young Persons) Rules, 1933. Amongst the provisions which these Rules contain are the following:—

(1) CONDUCT OF DEFENCE. The Court, except in any case where the child or young person is legally represented, is to allow his parent or guardian to assist him in conducting his defence. Where the parent or guardian cannot be found, or cannot reasonably be required to attend, the Court may allow any relative or other responsible person to take the place of the parent or guardian.

(2) CHARGE TO BE EXPLAINED. The Court is to explain to the child or young person the substance of the charge in simple language suitable to his age and understanding.

(3) INFORMATION TO BE OBTAINED. Where the child or young person is found guilty of an offence, whether after a plea of guilty or otherwise:

(i) he and his parent or guardian, if present, are to be given an opportunity of making a statement;

(ii) the Court, except in cases which appear to it to be of a trivial nature, is to obtain such information as to the general conduct, home

surroundings, school record and medical history of the child or young person as may enable it to deal with the case in his best interests, and, if such information is not fully available, is to consider the desirability of remanding the child or young person for such inquiry as may be necessary;

(iii) the Court is to take into consideration any report which may be furnished by a Probation Officer or by a local authority.

(4) CONSIDERATION OF REPORTS. Any written report of a Probation Officer, local authority, or registered medical practitioner may be received and considered by the Court without being read aloud provided that:

(a) the child or young person is to be told the substance of any part of the report bearing on his character or conduct which the Court considers to be material to the manner in which he should be dealt with;

(b) the parent or guardian, if present, is to be told the substance of any part of the report which the Court considers to be material (to the manner in which the child or young person should be dealt with) and which has reference to his character or conduct, or the character, conduct, home surroundings, or health of the child or young persons; and

(c) if the child or young person or his parent or guardian, having been told the substance of any part of such report, desires to produce evidence with reference thereto, the Court, if

it think the evidence material, is to adjourn the proceedings for the production of further evidence and is, if necessary, to require the attendance at the adjourned hearing of the person who made the report.

142. Treatment of Juvenile Offenders. (i) The words 'conviction' and 'sentence' are not to be used in relation to children and young persons dealt with summarily. A child or young person is not 'convicted' but is found guilty of an offence; instead of a 'conviction' there is a finding of guilt; instead of a 'sentence' there is an order made on such a finding.

(ii) There are restrictions on punishment. A child is not to be ordered to be imprisoned for an offence or be committed to prison in default of payment of a fine, damages or costs. A young person is not to be ordered to be imprisoned for an offence, or be committed to prison in default of payment of a fine, damages or costs, unless the Court certifies that he is of so unruly a character that he cannot be detained in a remand home or that he is so depraved a character that he is not a fit person to be so detained.

(iii) Among the methods available for dealing with a juvenile offender is to dismiss the charge under the Probation of Offenders Act, or to make a Probation Order, or to order him to be sent to an approved school, or to commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him, or to fine him, or in certain cases to order his detention in a remand home. Remand homes are dealt with in Paragraph 149.

Section 3

Children and Young Persons in Need of Care or Protection

143. RULES OF PROCEDURE. In the case of a child or young person brought before a Juvenile Court as being in need of care or protection the procedure is laid down in Part II of the Summary Jurisdiction (Children and Young Persons) Rules, 1933. Amongst the provisions which these Rules contain are the following:—

(1) HEARING OF APPLICATION. Where the nature of the case, or the evidence to be given, is such that in the opinion of the Court it is in the interests of the child or young person that the evidence, other than any evidence relating to the character or conduct of the child or young person, should not be given in his presence, the Court may hear any part of such evidence in his absence; and in that event his parent or guardian is to be permitted to remain in Court during the absence of the child or young person.

(2) POWER TO EXCLUDE PARENT. The Court may exclude the parent or guardian of the child or young person while he gives evidence or makes a statement, if the Court is satisfied that in the special circumstances it is proper to do so. But the Court is to inform the parent or guardian of the substance of any allegation made by the child or young person, and is to give him an opportunity of meeting it by calling evidence or otherwise.

(3) INFORMATION TO BE OBTAINED. Where the Court is satisfied that the child or young person comes within the description mentioned in the application:

(i) the Court is to obtain such information as to the general conduct, home surroundings, school record and medical history of the child or young person as may enable it to deal with the case in his best interests; and must, if such information is not fully available, consider the desirability of adjourning the case for such inquiry as may be necessary, or of making an interim order (for his detention or continued detention in a place of safety, or for his committal to the care of a fit person, whether a relative or not, who is willing to undertake the care of him);

(ii) the Court is to take into consideration any report which may be furnished by a Probation Officer or local authority.

(4) CONSIDERATION OF REPORTS. Any written report of a Probation Officer, local authority or registered medical practitioner may be received and considered by the Court without being read aloud—provided that—

(i) the child or young person is to be told the substance of any part of the report bearing on his character or conduct which the Court considers to be material to the manner in which he should be dealt with;

(ii) the parent or guardian, if present, is to be told the substance of any part of the report

which the Court considers to be material and which has reference to his character or conduct, or the character, conduct, home surroundings or health of the child or young person; and

(iii) if the child or young person or his parent or guardian, having been told the substance of any part of such report, desires to produce evidence with reference thereto, the Court, if it thinks the evidence material, is to adjourn the proceedings for the production of further evidence and must, if necessary, require the attendance at the adjourned hearing of the person who made the report.

144. Powers of Court. If the Court is satisfied that a child or young person is in need of care or protection it may (a) order him to be sent to an approved school, or (b) commit him to the care of any fit person, whether a relative or not, who is willing to undertake the care of him, or (c) order his parent or guardian to enter into a recognisance to exercise proper care and guardianship. Without making any other Order, or in addition to making an Order under either (b) or (c), the Court may make an Order placing him for a specified period, not exceeding three years, under the supervision of a Probation Officer or of some other person appointed for the purpose by the Court.

145. Procedure under Education Act, 1944. (i) Under the Education Act, 1944, it is the duty of the parent of every child of compulsory school age

to cause him to receive efficient full-time education suitable to his age, ability and aptitude.

(ii) If any child of compulsory school age who is a registered pupil at a school fails to attend regularly —such failure not being due, amongst other things, to sickness or any unavoidable cause—the parent is guilty of an offence. The local education authority is required to institute proceedings wherever, in their opinion, they are necessary for the purpose of enforcing the duty imposed upon a parent by the Act.

(iii) Where the Court before which a prosecution is brought—an ordinary Court of Summary Jurisdiction—is satisfied that the child has failed to attend regularly, then, whether or not the parent is convicted, the Court may direct that the child be brought before a Juvenile Court by the authority by whom or on whose behalf the proceedings were instituted. The Juvenile Court may, if it is necessary to do so for the purpose of securing the regular attendance of the child at school, make any order such as is set out in paragraph 144 (Education Act, 1944, ss. 36, 39 and 40).

Section 4

Refractory Children and Young Persons

146. Proof by Parent or Guardian. Where the parent or guardian of a child or young person proves to a Juvenile Court that he is unable to control the child or young person, the Court, if satisfied—

(a) that it is expedient so to deal with the child or young person; and

(b) that the parent or guardian understands the results which will follow from, and consents to, the making of the Order, may order the child or young person to be sent to an approved school, or may order him to be placed for a specified period, not exceeding three years, under the supervision of a Probation Officer or of some other person appointed for the purpose by the Court, may commit him to the care of any fit person who is willing to undertake the care of him. An Order that the child or young person be sent to an approved school is not, however, to be made unless the local authority within whose area he is resident agrees.

147. Proof by Poor Law Authority. Where a Poor Law Authority satisfy a Juvenile Court that any child or young person maintained in, or boarded out from, a school or other institution belonging to the Authority is refractory, and that it is expedient that he should be sent to an approved school, the Court may order him to be sent to such a school.

Section 5

Remand Homes and Approved Schools

148. Remand Home Accommodation. (i) It is the duty of the County or County Borough Council to provide adequate remand home accommodation for the Courts in its area. Such a Council may itself establish a remand home, or join with another

County or County Borough in so doing, or it may arrange with the occupiers of any premises to use them for this purpose. Such premises may be homes for boys or girls, or similar institutions, or private dwelling houses.

(ii) The expenses incurred in respect of remand homes are borne in equal proportions by the Exchequer and by the County and County Borough Councils.

149. Purpose of Remand Homes. (i) Remand homes are necessary for the custody of boys and girls who cannot suitably be released on bail before trial while inquiries are being made, or after trial while, for instance, awaiting reception in an approved school. They are also included among the ' places of safety ' defined in section 107 of the Children and Young Persons Act, 1933, so that children or young persons brought before a Juvenile Court as being in need of care or protection or beyond control may be detained pending consideration of their cases by the Court.

(ii) A remand home can serve other purposes, such as observation of young people during remand, so as to provide material to assist the Court to decide on the appropriate treatment.

(iii) There are now seventy-nine remand homes provided by County or County Borough Councils—fifty-five for boys, eighteen for girls, and six mixed—affording accommodation for about 1,870 boys and about 400 girls. Others are in course of preparation.

In addition, forty-one other premises are used as remand homes by arrangement.

150. Home Office Schools. (i) The primary object of Home Office schools, or approved schools, as they are termed in the Children and Young Persons Act, 1933, is to provide the Courts with the means of giving young offenders under seventeen, and children and young persons under seventeen who need care or protection, such education and training as they require to enable them to become good citizens.

(ii) The choice of a Juvenile Court in dealing with many of these young people lies between supervision in their own homes under a Probation Officer and removal from their homes to the care of a fit person or to an approved school for residential treatment. It is pointed out that no rule can be suggested which would be an invariable guide in deciding between these alternatives, as much must depend on the circumstances in which the child or young person is brought before the Court, his age, his previous conduct, and particularly his home surroundings and companions.

(iii) There are now 141 approved schools—eight-nine for boys, fifty-one for girls, and one mixed. Of these, 111 are under voluntary management; the remainder are provided by local authorities. The number of children and young persons sent by Courts who were in the schools at the end of 1945 was 11,081—8,975 boys and 2,106 girls. The cost of maintaining children sent to approved schools by

the Courts is borne in equal proportions by the Exchequer and by local authorities.

151. Records of Pupils. It is stated that the success of the training given in approved schools is beyond dispute. ' Records based on the careers of pupils for three years after they have left the schools show that the great majority do well and give no ground for further anxiety '.

152. Hostels and Homes. In order generally to assist the use of probation in the case of young offenders a number of hostels and homes have been approved for use. By ' hostel ' is meant an institution where a lad or a girl can live and go out to daily work. By ' home ' is meant a place where a young offender not only lodges but also works and receives a certain amount of practical training. In addition to these hostels and homes, the use of lodgings which have been personally inspected by Probation Officers can, it is pointed out, be made a valuable auxiliary to the probation system, particularly for young offenders over school age and under twenty-one.

Section 6

Adoption of Children Act, 1926

153. Apart from dealing with cases under the Children and Young Persons Act, 1933, Juvenile Courts have entrusted to them the duty of hearing applications under the Adoption of Children Act, 1926 (as amended by the Adoption of Children (Regulation) Act, 1939). An application for an

Adoption Order is made to the Juvenile Court for the place where either the applicant or the infant resides.

154. Two Spouses as Adopters. A Juvenile Court may make an Adoption Order in favour of two spouses jointly. With that exception, no Adoption Order is to be made authorising more than one person to adopt an infant.

155. Restrictions on Making Orders. (i) An Adoption Order is not to be made in any case where:

(a) The applicant is under the age of twenty-five years. But it is lawful for the Court, if it thinks fit, to make an Order notwithstanding that the applicant is less than twenty-five years of age if the applicant is the mother of the infant.

(b) The applicant is less than twenty-one years older than the infant in respect of whom the application is made. But it is lawful for the Court, if it thinks fit, to make an Order, notwithstanding that the applicant is less than twenty-one years older than the infant, if the applicant and the infant are within the prohibited degrees of consanguinity, or if the application is made by or on behalf of two spouses jointly and the wife is the mother of the infant or the husband is the putative father of the infant.

(ii) An Adoption Order is not to be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female, unless the Court is satisfied that there are

special circumstances which justify as an exceptional measure the making of an Order.

(iii) An Adoption Order is not to be made except with the consent of any person or body who is a parent or guardian of the infant in respect of whom the application is made, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant. But the Court may dispense with any consent required if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant, or cannot be found, or is incapable of giving such consent, or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute, or is a person whose consent ought, in the opinion of the Court and in all the circumstances of the case, to be dispensed with.

(iv) An Adoption Order is not to be made (a) in favour of any applicant who is not both domiciled in England and Wales or in Scotland and resident in England or in Wales, or (b) in respect of any infant who is not both a British subject and resident in England or in Wales (Postponement of Enactments (Miscellaneous Provisions) Act, 1939, s. 2).

156. Matters on which Court to be Satisfied. The Court, before making an Adoption Order, is to be satisfied with respect to the following matters:—

(a) that every person whose consent is necessary, and whose consent is not dispensed with, has consented to and understands the nature and effect of the Order, and, in particular in the case of any parent, understands that the

effect of the Order will be permanently to deprive him or her of his or her parental rights; and

(b) that the Order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and

(c) that the applicant has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

157. Interim Orders. The Court may postpone the determination of an application for an Adoption Order, and may make an interim Order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period, upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the Court may think fit. All such consents as are required to an Adoption Order are necessary to an interim Order, but the Court has the same power to dispense with any such consent.

158. Procedure. The procedure to be followed on an application under the Act to a Court of Summary Jurisdiction is set out in the Adoption of Children (Summary Jurisdiction) Rules, 1936. These Rules contain the provision that every application is to be made, heard and determined *in camera*.

Chapter 10

DOMESTIC PROCEEDINGS

Section 1

Husband and Wife

159. Wife's Application. Under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, a married woman may apply for an order against her husband on one of the following grounds:—

(1) That he has been convicted summarily of an aggravated assault upon her.

Under section 43 of the Offences Against the Person Act, 1861, an aggravated assault means an assault of such an aggravated nature that it cannot, in the opinion of the Justices, be sufficiently punished as a common assault.

(2) That he has been convicted upon indictment of an assault upon her, and sentenced to pay a fine of more than £5 or to a term of imprisonment exceeding two months.

(3) That he has deserted her.

(i) No one can desert who does not actively and wilfully bring to an end an existing state of cohabitation (*Fitzgerald* v. *Fitzgerald* (1869), 1 P.&.D. 694).

(ii) Neglect or contempt, however hard to bear, does not constitute desertion. But the occupation of a separate dwelling-house is not necessary to con-

stitute it. Forsaking her bed, avoiding her society, and seclusion of himself from her in a separate part of a common residence may amount to desertion of a wife by her husband (*Powell* v. *Powell*, [1922] P. 278).

(iii) Desertion is not the withdrawal from a place but from a state of things. The husband may live in a place and make it impossible for his wife to live there, though it is she and not he who actually withdraws; and that state of things may be the desertion of the wife. The law does not deal with the mere matter of place. What it seeks to enforce is the recognition and discharge of the common obligations of the married state (*Pulford* v. *Pulford*, [1923] P. 18).

(iv) Desertion must include the abandonment by one spouse of the other, or causing her or him to live apart. The mere refusal or abandonment of sexual intercourse while the parties continue to abide under the same roof is not desertion (*Jackson* v. *Jackson*, [1924] P. 19). But the conduct of a spouse taken as a whole, including the refusal of sexual intercourse, may amount to such a total disregard of the fundamental obligations of matrimony as to afford evidence of an intention to desert (*Scotcher* v. *Scotcher* (1946), 62 T.L.R. 517).

(v) Where husband and wife have separated by mutual consent, desertion may supervene without the necessity of a resumption of cohabitation. This can happen where (a) on the part of the spouse alleged to be in desertion, there is repudiation of the agreement under which separation took place, no

step taken towards the resumption of cohabitation, and, in addition, the intention of deserting, and (b) on the part of the spouse alleging desertion, a *bona fide* willingness to resume cohabitation without regard to its terms—in short, if it can be said that both parties are regarding the agreement as a dead letter (*Pardy* v. *Pardy*, [1939] P. 288).

(4) That he has been guilty of persistent cruelty to her.

(i) Mere conduct which causes injury to health is not enough to establish cruelty. Wilful and unjustifiable acts inflicting pain and misery and causing injury to health must be proved (*Horton* v. *Horton*, [1940] P. 187).

(ii) A complaint of persistent cruelty cannot be supported by evidence of an isolated act (*Rigby* v. *Rigby*, [1944] P. 33).

(5) That he has been guilty of wilful neglect to provide reasonable maintenance for her or her infant children whom he is legally liable to maintain.

(i) Before Justices find a husband guilty of wilful neglect to provide reasonable maintenance they must be satisfied either that he had actual earnings in his possession or that he had the capability of earning money. It would be enough if he could earn money, but wilfully abstained from doing so (*Earnshaw* v. *Earnshaw*, [1896] P. 160).

(ii) An agreement for separation between husband and wife providing payments by the husband for the benefit of the wife, coupled with an agreement by her not to make any claim for maintenance or to institute proceedings for that purpose, does not oust

the jurisdiction of the Court to inquire whether the husband has been guilty of wilful neglect to provide reasonable maintenance (*Matthews* v. *Matthews*, [1932] P. 103).

(6) That he is a habitual drunkard (Licensing Act, 1902, s. 5).

'Habitual drunkard' means a person who, not being amenable to any jurisdiction in lunacy, is notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, or the habitual taking or using, except upon medical advice, of opium or other dangerous drugs within the meaning of the Dangerous Drugs Acts, 1920 and 1923, at times dangerous to himself or herself or to others, or incapable of managing himself or herself and his or her affairs (Habitual Drunkards Act, 1879, s. 3, and Summary Jurisdiction (Separation and Maintenance) Act, 1925).

(7) That he has been guilty of persistent cruelty to her children.

(8) That he, while suffering from a venereal disease and knowing that he was so suffering, insisted on having sexual intercourse with her.

The word 'insisted' means something short of compelling, but what will constitute insistence is a matter for careful investigation and for evidence (*Rigby* v. *Rigby*, [1944] P. 33).

(9) That he has compelled her to submit herself to prostitution.

(10) That he has been guilty of adultery (Matrimonial Causes Act, 1937, s. 11).

160. Husband's Application. A husband may

apply for an Order against his wife on one of the following grounds :—

(1) That she is a habitual drunkard (Licensing Act, 1902, s. 5).

(2) That she has been guilty of persistent cruelty to his children (Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 1 (3)).

(3) That she has been guilty of adultery (Matrimonial Causes Act, 1937, s. 11).

161. Powers of Court. (i) On a wife's application the Court may make an Order or Orders containing all or any of the following provisions :—

(a) A provision that the applicant be no longer bound to cohabit with her husband (which provision while in force will have the effect in all respects of a decree of judicial separation on the ground of cruelty). N.B.—It should be borne in mind where there has been desertion that the effect of the non-cohabitation clause is to prevent a continuance of desertion after the date of the Order (*Mackenzie* v. *Mackenzie*, [1940] P. 81).

(b) A provision that the legal custody of any children of the marriage be committed to the applicant.

(c) A provision that the husband shall pay to the applicant personally, or for her use, to any officer of the Court or third person on her behalf such weekly sum not exceeding £2 and a weekly sum not exceeding 10s. for the maintenance of each such child whose custody is committed to her until such child attains the age of sixteen years, as the Court,

having regard to the means both of the husband and wife, considers reasonable.

(d) A provision for payment by the applicant or the husband, or both of them, of the costs of the Court and such reasonable costs of either of the parties as the Court may think fit.

(ii) On a husband's application the Court may make an Order containing all or any of the following provisions:—

(a) A provision that the applicant be no longer bound to cohabit with his wife (which provision, while in force, will have the effect in all respects of a decree of judicial separation on the ground of cruelty).

(b) A provision for the legal custody of any children of the marriage.

(c) A provision that the applicant shall pay to his wife personally or for her use to any officer of the Court or other person on his behalf such weekly sum not exceeding £2 as the Court, having regard to the means both of the applicant and his wife, considers reasonable.

(d) A provision for payment by the applicant or his wife, or both of them, of the costs of the Court and such reasonable costs of the parties, or either of them, as the Court may think fit.

162. Variation or Discharge of Order. (i) The Court may, on the application of the married woman or of her husband, and upon cause being shown on fresh evidence to its satisfaction at any time, alter,

vary or discharge any Order; and it may from time to time increase or diminish the amount of any weekly payment ordered to be made so that it does not in any case exceed £2.

(ii) If a married woman who has obtained an Order commits an act of adultery the Court is to discharge the Order. But the Court may refuse to do so if, in its opinion, such act of adultery was conduced to by the failure of the husband to make such payments as he was able to make under the Order.

(iii) In the event of the Order being discharged, the Court may make a new Order that the legal custody of the children of the marriage shall continue to be committed to the wife, and that the husband shall pay to the wife or to any officer of the Court or third person on her behalf a weekly sum not exceeding ten shillings for the maintenance of each such child until the child attains the age of sixteen years.

163. Resumption of Cohabitation. Where a married woman with respect to whom an Order has been made voluntarily resumes cohabitation with her husband, after living apart from him, the Order ceases to have effect (Summary Jurisdiction (Separation and Maintenance) Act, 1925, s. 2).

Section 2

Domestic Proceedings Courts

164. Constitution of Courts. Provision is made by the Summary Procedure (Domestic Proceedings)

Act, 1937, for separating the hearing of domestic proceedings from other business. The Courts are to consist of not more than three Justices, and they are to be so constituted as to include, so far as practicable, both a man and a woman.

165. Sittings of Courts. No persons are to be present during the hearing of any domestic proceedings except:—

(a) members and officers of the Court;

(b) parties to the case before the Court, their solicitors and counsel, witnesses and other persons directly concerned in that case and other persons whom either party desires to be present;

(c) solicitors and counsel in attendance for other cases;

(d) representatives of newspapers or news agencies;

(e) any other person whom the Court may permit to be present.

166. Reports. Newspaper reports of domestic proceedings are restricted.

167. Attempted Conciliation. A Probation Officer or any other person who, at the request of the Court or a Justice of the Peace, has attempted in any domestic proceedings to effect a conciliation between the parties may, if the attempt has proved unsuccessful, furnish 'statements of allegations'. The Court may make use of these statements for the

purpose of putting or causing to be put questions to any witness; but nothing contained in them is to be received as evidence.

168. INVESTIGATION AS TO MEANS. In any domestic proceedings in which an Order may be made for the periodical payment of money, the Court or a Justice of the Peace may request a Probation Officer to conduct an investigation into the means of the parties. But no direction to report to the Court is to be given to the Probation Officer until the Court has determined all issues arising in the proceedings, other than the issue as to the amount to be paid.

Section 3

Guardianship of Infants Acts

169. Proceedings under the Guardianship of Infants Acts, 1886 and 1925, are heard by a Domestic Proceedings Court.

170. MARRIAGE OF INFANT. The Court may, on application being made, consent to the marriage of an infant if any person whose consent is required refuses to consent. The procedure to be followed on an application for consent is laid down in the Guardianship of Infants (Summary Jurisdiction) Rules, 1925.

Chapter 11

AFFILIATION PROCEEDINGS

171. Who May Apply. (i) Any single woman with child, or delivered of a bastard child, may apply for a summons against the alleged father.

(ii) The term ' single woman ' is not confined to unmarried women. It may include married women who are reduced to the condition of single women by widowhood or otherwise.

(iii) A married woman who is actually separated from her husband by an Order of the Court is to be regarded as a ' single woman '.

(iv) The wife of a soldier serving compulsorily overseas who during his absence has committed adultery, which has not been condoned, is to be regarded as a ' single woman ' (*Jones* v. *Evans*, [1944] 1 K.B. 582; *Hockaday* v. *Goodenough* (1945), 109 J.P. 237).

(v) No application can be entertained when the mother has married since the birth of the child and is at the time of the application living with her husband.

172. When Application to be Made. (i) Application may be made either before the birth, or within twelve months thereafter, or at any time thereafter on proof that the alleged father has within twelve months next after the child's birth paid money for its maintenance.

(ii) Upon proof that the alleged father ceased to reside in England within the twelve months next after the birth of the child, application may be made at any time within the twelve months next after his return to England.

173. To Whom Made. Application for a summons may be made to one Justice acting for the petty sessional division of the county or for the place in which the woman resides.

174. Application Before Birth. If application is made before the birth of the child the woman has to make a deposition stating on oath who is the father.

175. Evidence. At the hearing of a bastardy summons the Justices must hear the evidence of the woman and such other evidence as she may produce, and also any evidence tendered by or on behalf of the alleged father.

176. Corroboration. (i) The evidence of the mother must be corroborated in some material particular by other evidence to the satisfaction of the Justices.

(ii) Corroborative evidence is evidence which shows or tends to show that the evidence of the mother is true. It is almost inevitable that there never will be any direct corroboration of sexual connection. The evidence in corroboration must always be circumstantial evidence, that is to say, evidence from which it may be inferred that the

defendant is the father of the child in question. What is required is independent testimony showing that sexual intercourse between the parties at the material time was not merely possible but that it was probable.

177. Amount of Order. A Bastardy Order may be for the payment of a sum of money weekly, not exceeding 20s. a week, for the maintenance and education of the child, and of the expenses incidental to the birth, and of the funeral expenses provided the child has died before the making of the Order, and of such costs as may have been incurred in the obtaining of the Order; and if the application is made before, or within two calendar months after the birth, the weekly sum may, if the Justices think fit, be calculated from the birth.

178. Time of Cessation of Order. No Order for maintenance, except for the recovery of money previously due, is to be valid after the child has attained the age of thirteen years, subject to this, that the Justices may direct in the Order that the payments to be made under it shall continue until the child is sixteen.

179. Fresh Evidence. Justices have jurisdiction to hear an application by a woman for an affiliation Order after a refusal of a previous application on the merits, and to make the Order if fresh evidence is adduced by the applicant. That means fresh evidence of a serious kind. A Court, though perhaps differently constituted, cannot properly be invited to

reverse a previous decision of its own on the same facts and on the same evidence (*R.* v. *Sunderland Justices, ex p. Hodgkinson,* [1945] 1 K.B. 502).

180. APPEAL. An appeal lies to Quarter Sessions from the making of an Affiliation Order, or the refusal to make such an Order, or from the revocation, revival or variation of such an Order (Criminal Justice Administration Act, 1914, s. 37).

Chapter 12

LIQUOR LICENSING

181. The 1910 Consolidation Act. (i) There are many statutes dealing with the subject of Liquor Licensing. The principal statute is the Licensing (Consolidation) Act, 1910. That Act repealed, in whole or in part, some thirteen statutes, the earliest of these being the Alehouse Act, 1828. The Act of 1910 was itself amended by the Licensing Act, 1921, and this was followed by other enactments on the subject.

(ii) Some features of the general licensing laws are briefly dealt with in paragraphs 182 to 189. The Licensing Planning (Temporary Provisions) Act, 1945, which is applicable to areas that have sustained extensive war damage, is referred to in paragraph 190.

182. Excise Licences. (i) Before any person may manufacture, deal in or sell by retail any intoxicating liquor a licence from the excise authorities is necessary.

(ii) Retail licences are principally of two kinds: on-licences and off-licences.

183. Justices' Licences. Justices' licences may be regarded as certificates authorising the excise authorities to grant the appropriate excise licences.

184. Brewster Sessions. (i) For the purpose of granting justices' licences the Licensing Justices for

every licensing district must within the first fourteen days in February in every year hold a special session (commonly known as ' brewster sessions ') called the general annual licensing meeting.

(ii) The Licensing Justices must hold a meeting at least twenty-one days before the general annual licensing meeting, and appoint the day, hour and place at which the general annual licensing meeting is to be held.

185. ADJOURNMENT. (i) The Licensing Justices may at any general annual licensing meeting adjourn the meeting to such day and to such place within the licensing district as they think fit for meeting the convenience of persons intending to apply for justices' licences, and a day and place for at least one such adjourned meeting must be appointed.

(ii) Every such adjourned meeting is deemed to be a continuation of the general annual licensing meeting, and must be held within one month from the date of the original meeting, and the first adjourned meeting must not be held on any one of the five days next after the date of the original meeting. But where an applicant for a justices' licence through inadvertence or misadventure fails to comply with any preliminary requirements of the Licensing (Consolidation) Act, 1910, the Licensing Justices may postpone the consideration of his application to a subsequent meeting.

(iii) If Licensing Justices have begun to consider a proposal at an adjourned meeting held within one month of the original meeting, and are unable to

deal with it fully at that meeting, they are entitled to adjourn the meeting further for the consideration of the same proposal, though the date of the further adjourned meeting is not within one month from the date of the original meeting (*R.* v. *Wandsworth Licensing Justices, ex p. Rogers*, [1937] 1 K.B. 144).

186. Transfer Sessions. At the general annual licensing meeting in each year the Licensing Justices must appoint a day, hour and place for not less than four nor more than eight special sessions (called transfer sessions) to be held in their district during the ensuing year, at periods as near as may be equally distant. The transfer of a justices' licence and the special removal of a justices' licence cannot be authorised except at transfer sessions or at a general annual licensing meeting.

187. Various Kinds of Grant. There are six different kinds of grant which can be made at the general annual licensing meeting or an adjournment of it:—

(i) New licences.

(ii) Renewals.

(iii) Transfers.

(iv) Removals (ordinary or special). An ordinary removal is the removal of a licence from one house to another within the same licensing district or to premises in a licensing district within the same county. A special removal is a removal on the ground (a) that the premises in respect of which the licence has

been granted are or are about to be pulled down or occupied under any Act for the improvement of highways or for any other public purpose, or (b) that the premises have been rendered unfit for use by fire, tempest or other unforeseen and unavoidable calamity.

(v) Provisional grants of on-licences.

(vi) Provisional ordinary removals.

188. CONFIRMATION. (i) The grant of a new licence and an ordinary removal require confirmation. The confirming authority as respects a licensing district being a petty sessional division of a county is the Court of Quarter Sessions; in a borough having not less than ten Justices it is the whole body of Borough Justices.

(ii) There are special provisions applicable to premises in a licensing planning area, and these are contained in the Licensing Planning (Temporary Provisions) Act, 1945, referred to in paragraph 190.

189. OCCASIONAL LICENCES. (i) An occasional licence cannot be granted except with the consent of a Petty Sessional Court and unless twenty-four hours at least before applying the applicant has served on the superintendent of police for the district notice of his intention to apply to the Court.

(ii) But where there is no sitting of a Petty Sessional Court within three days before the time when the licence is required, the consent may be given by any two Justices acting for the division and sitting together.

(iii) The word ' occasional ' does not constitute a complete bar to the grant of applications made regularly. Justices have jurisdiction to grant or to refuse such applications as, in the exercise of their discretion, they find it proper to do (*Chandler* v. *Emerton*, [1940] 2 K.B. 261).

190. War-damaged Areas. (i) The Licensing Planning (Temporary Provisions) Act, 1945, empowered the Home Secretary by Order to declare any area which had sustained extensive war damage to be a licensing planning area. When such an Order has been made a Licensing Planning Committee is formed, comprising Licensing Justices and representatives of local planning authorities in equal numbers, with a chairman appointed by the Home Secretary.

(ii) It is the duty of a Licensing Planning Committee to endeavour to secure that the number, nature and distribution of the licensed premises in the area, the accommodation provided thereat, and the facilities given thereat for obtaining food, accord with local requirements, regard being had in particular to any redevelopment or proposed redevelopment of the area.

(iii) The Act contains provisions with respect to (amongst other things) removals, new licences, surrender of licences and temporary premises in licensing planning areas.

(iv) No new licence is to be granted in respect of any premises in a licensing planning area unless the Licensing Justices are satisfied that the Licensing

Planning Committee have no objection. The grant of a new licence in respect of any premises in a licensing planning area does not require confirmation; but the re-grant of a licence granted for a term does.

(v) The general procedure of a Licensing Planning Committee is set out in the Licensing Planning Regulations, 1945.

191. Disqualification of Justices. (i) No Justice may act for any licensing purpose who is, or is in partnership with, or holds any share in any company which is, a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district or in the district or districts adjoining to that in which such Justice usually acts. Nor may he act in respect of any premises in the profits of which he is interested, or of which he is wholly or partly the owner, lessee or occupier, or for the owner, lessee or occupier of which he is manager or agent; but he is not disqualified by reason of his having vested in him a legal interest only and not a beneficial interest (Licensing (Consolidation) Act, 1910, s. 40).

(ii) A person is not, by reason of his membership of, or anything done by him in the course of his duties as a member of, a Licensing Planning Committee, or a sub-committee of it, to be held to be disqualified for acting as a Licensing Justice in relation to any matter falling to be decided by the Licensing Justices for the licensing planning area (Licensing Planning (Temporary Provisions) Act, 1945, s. 12).

Chapter 13

APPEALS

192. Appeals to Quarter Sessions. (i) There is a right of appeal in criminal cases to a Court of Quarter Sessions against conviction and against sentence and against Orders under the Probation of Offenders Act. There is no general right of appeal against Orders, though many statutes confer such a right specifically, as, for example, in the case of the making or refusal of an Affiliation Order (paragraph 180). The procedure is regulated by the Summary Jurisdiction (Appeals) Act, 1933.

(ii) The appellant must, within fourteen days after the day on which the decision of the Court of Summary Jurisdiction was given, give to the clerk to that Court and to the other party, notice in writing of his appeal, stating the general grounds of his appeal and signed by him or by his agent.

(iii) Where notice of appeal against conviction or sentence has been given, and the appellant or the other party has not sufficient means to obtain legal aid, either may apply to the Magistrates' Court for an Appeal Aid Certificate. This may be granted if it appears to the Court that the applicant's means are insufficient to enable him to obtain legal aid, and that by reason of the nature of the offence of which the appellant was convicted, or by reason of the sentence, or of exceptional circumstances, it is

desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of his appeal, or, as the case may be, in resisting the appeal. The appellant has to give security, usually by way of recognisance, to prosecute his appeal.

193. Appeal by Special Case. (i) Any person aggrieved who desires to question a conviction, order, determination or other proceeding of a Court of Summary Jurisdiction on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the Court to state a special case for the decision of the King's Bench Division of the High Court of Justice (statute: Summary Jurisdiction Act, 1879, s. 33). The application must be made in writing and left with the Clerk of the Court at any time within seven clear days from the date of the proceedings to be questioned. There must also be left with him within the same period a copy of such application for each of the Justices constituting such Court. The case must be stated within three calendar months after the date of the application (Summary Jurisdiction Rules, 1915, r. 52).

(ii) Prior to the passing of the Summary Jurisdiction Act, 1879, power to state a case was confined to the Summary Jurisdiction Act, 1857, s. 2, which relates to the determination of any information or complaint. Under this statute application for a case to be stated had to be made in writing within three days after the determination complained of.

(iii) Where Justices purport to state a case under the 1857 Act they may be taken to have stated it under all their powers (*Rochdale Building Society* v. *Rochdale Corporation* (1886), 51 J.P. 134).

(iv) As mentioned in paragraph 89, inasmuch as the decision of a majority is a decision of the Court, the fact that it is the decision of a majority should never appear in any case stated for the opinion of the High Court (*Harrow Urban District Council* v. *More O'Ferrall, Ltd.* (1946), 62 T. L. R. 608).

194. Certiorari. Where there has been a denial of natural justice before a Court of Summary Jurisdiction, resulting in the conviction of a defendant, his remedy is not by case stated or appeal to Quarter Sessions, but by application to the High Court for an Order of Certiorari to remove and quash the conviction (*The King* v. *Wandsworth Justices, ex p. Read*, [1942] 1 K.B. 281; 166 L.T. 118).

195. Domestic Proceedings. An appeal from an Order or the refusal of an Order by a Court of Summary Jurisdiction in matrimonial proceedings lies to the Probate, Divorce and Admiralty Division of the High Court of Justice (Summary Jurisdiction (Married Women) Act, 1895, s. 11). Under the Guardianship of Infants Acts the appeal is to the Chancery Division.

196. Licensing. (i) Any person who thinks himself aggrieved by the refusal of the Licensing Justices of any licensing district to grant a renewal, transfer or special removal of a Justices' licence may appeal to

the Court of Quarter Sessions for the county in which the premises in respect of which the appeal is made are situated.

(ii) Notice in writing must be given by the appellant of his intention to appeal, and of the grounds, to the Clerk of the Licensing Justices within five days next after the decision has been given, and at least fourteen days before the holding of the Quarter Sessions to which the appeal is made (Licensing (Consolidation) Act, 1910, s. 29).

(iii) In a borough having a separate Court of Quarter Sessions an appeal against an Order of the Licensing Justices directing structural alterations to be made lies, at the option of the appellant, either to the Borough Quarter Sessions or to the Quarter Sessions of the county in which the borough is situated (Licensing (Consolidation) Act, 1910, s. 72).

(iv) Provision is made in the Licensing Planning (Temporary Provisions) Act, 1945, s. 6 (5) in respect of an appeal from the refusal of Licensing Justices to authorise the removal of a licence in a licensing planning area, or to declare a provisional grant of authority for a removal to be final.

Part II

The Non-Judicial Duties of Justices of the Peace

197. Declarations. Among the non-judicial duties devolving on a Justice of the Peace is that of taking declarations. In every case he should carefully scrutinise the document submitted to him in order that he may satisfy himself whether he is being asked merely to witness a declaration or whether he is being asked to vouch for some fact or facts from his own personal knowledge.

198. Lunacy and Mental Deficiency. The Justices of every County and Quarter Sessions Borough not within the immediate jurisdiction of the Board of Control must, whether there is a licensed house within the County or Borough or not, annually appoint three or more Justices, and also one medical practitioner or more, to act as Visitors of licensed houses within the County or Borough and otherwise for the purposes of the Lunacy and Mental Treatment Acts, 1890 to 1930. The Clerk of the Peace or some other person to be appointed by the Justices for the County or Borough acts as Clerk to the Visitors. The appointment of a Visitor or Clerk by the Justices of a Borough requires the written consent of the Recorder of the Borough.

199. Parliamentary Candidates' Expenses. Within thirty-five days after the day on which the candidates returned at an election are declared elected, the election agent of every candidate must transmit to the Returning Officer a true return respecting election expenses. The return must be accompanied by a declaration made by the election agent before a Justice of the Peace in the prescribed form.

200. Passports. A Justice of the Peace is one of the persons authorised to verify the declaration of an applicant for a British passport. In such a case he is required from his personal knowledge to vouch the applicant as a fit and proper person to receive a passport and to state how long he has known him or her.

201. Pawn Tickets. A person claiming to be entitled to hold a pawn ticket but alleging that it has been lost, mislaid, destroyed or stolen, or fraudulently obtained from him, may make, with a person identifying him, a declaration before a Justice of the Peace. The form of declaration is obtained from the pawnbroker, to whom it must be delivered back not later than on the third day after the day on which it was delivered to the applicant (exclusive of a day or days on which the pawnbroker is prohibited from carrying on business).

202. Riot Act. A Justice of the Peace is one of the persons upon whom may devolve the duty of making the proclamation set forth in the Riot Act, 1714 (1 Geo. 1, st. 2, c. 5), if any persons to the

number of twelve or more are 'unlawfully, riotously and tumultuously assembled together to the disturbance of the public peace'. The proclamation is in the following form:—

> '*Our Sovereign Lord the King chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the Act made in the first year of King George for preventing tumults and riotous assemblies. God Save the King.*'

203. VACCINATION. The period within which the parent or other person having the custody of a child must cause it to be vaccinated is six months from its birth. But such parent or other person may make a statutory declaration within four months from the birth that he conscientiously believes that vaccination would be prejudicial to the health of the child. Such statutory declaration may be made before a Justice of the Peace. It must be sent within seven days to the Vaccination Officer of the district.

APPENDIX 1

MINISTERS, OFFICIALS AND ORGANISATIONS CONCERNED WITH MAGISTRATES' COURTS

LORD CHANCELLOR—The Rt. Hon. Viscount Jowitt.

CLERK OF THE CROWN IN CHANCERY AND PERMANENT SECRETARY TO THE LORD CHANCELLOR—Hon. Sir Albert E. A. Napier, K.C.B., House of Lords, S.W.1.

SECRETARY OF COMMISSIONS TO THE LORD CHANCELLOR—Sir Rupert Howorth, K.C.M.G., K.C.V.O., House of Lords, S.W.1.

HOME SECRETARY—The Rt. Hon. James Chuter Ede, M.P.

PARLIAMENTARY SECRETARY TO THE HOME OFFICE—Mr. G. H. Oliver, M.P.

PERMANENT UNDER SECRETARY OF STATE, HOME OFFICE—Sir Alexander Maxwell, G.C.B.

DEPUTY UNDER SECRETARY OF STATE, HOME OFFICE—Sir Frank Newsam, K.B.E.

CHANCELLOR OF THE DUCHY OF LANCASTER—Mr. J. B. Hynd, M.P., Lancaster Place, Strand, London, W.C.2.

DIRECTOR OF PUBLIC PROSECUTIONS—Sir Theobald Mathew, M.C., Devonshire House, Piccadilly, London, W.1.

BORSTAL ASSOCIATION—*Address:* 19 Chester Square, London, S.W.

CHIEF CONSTABLES' ASSOCIATION (CITIES AND BOROUGHS OF ENGLAND AND WALES)—*Hon. Sec.:* Mr. A. C. West, O.B.E., City Police Headquarters, Portsmouth.

CLARKE HALL FELLOWSHIP—*Trustees:* The Rt. Hon. the Earl of Feversham, the Rt. Hon. Viscount Samuel and Mrs. William Temple. *Secretary:* H. E. Norman, O.B.E. *Address:* Bond Gate, Helmsley, York.

GENERAL COUNCIL OF THE BAR—*Chairman:* Mr. G. O. Slade, K.C. *Secretary:* Mr. E. A. Godson. *Address:* 5 Stone Buildings, Lincoln's Inn, London, W.C.2.

JUSTICES' CLERKS' SOCIETY—*President:* Mr. R. D. Newill. *Vice-president:* Mr. E. W. Pettifer. *Hon. Secretary:* Mr. A. F. Stapleton Cotton. *Hon. Treasurer:* Mr. E. Raymond-Bond. *Address:* 16 Waterloo Road, Epsom, Surrey.

LAW SOCIETY, THE—*Secretary:* Mr. T. G. Lund. *Address:* The Law Society's Hall, Chancery Lane, London, W.C.2.

MAGISTRATES' ASSOCIATION—*President:* The Lord Chancellor. *Chairman of Council:* the Rt. Hon. Viscount Sankey. *Treasurer:* Mr. D. A. J. Buxton, J.P. *Secretary:* Miss Alice Lenton, J.P.

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NATIONAL ASSOCIATION OF DISCHARGED PRISONERS' AID SOCIETIES—*Address:* 66 Eccleston Square, London, S.W.1.

NATIONAL ASSOCIATION OF PRISON VISITORS—*Secretary:* E. N. Barran. *Address:* 6 Old Bailey, London, E.C.4.

SOCIETY OF CLERKS OF THE PEACE OF COUNTIES AND OF CLERKS OF COUNTY COUNCILS—*Hon. Secretary:* County Hall, Ipswich.

SOCIETY OF THE CITY AND BOROUGH CLERKS OF THE PEACE—*Hon. Secretary:* E. M. Redhead, 41 John Dalton Street, Manchester.

SOCIETY OF CHAIRMEN AND DEPUTY CHAIRMEN OF QUARTER SESSIONS IN ENGLAND AND WALES—*Chairman:* Sir Roland Burrows, K.C. *Vice-Chairman:* Mr. Eric Neve, K.C. *Secretary:* Mr. C. W. Radcliffe, Guildhall, Westminster, S.W.1.

SOCIETY OF STIPENDIARY MAGISTRATES OF ENGLAND AND WALES—*Hon. Secretary:* Sir E. Marlay Samson, K.B.E., K.C., Magistrates' Court, Swansea.

APPENDIX 2

THE DIRECTOR OF PUBLIC PROSECUTIONS AND PROSECUTORS

THE Prosecution of Offences Regulations, dated August 28, 1946 (S. R. & O., 1946, No. 1467/L. 17) contain the following, among other, provisions:—

2. The Director of Public Prosecutions shall give advice, whether on application or on his own initiative, to Government Departments, clerks to justices, chief officers of police and to such other persons as he may think right in any criminal matter which appears to him to be of importance or difficulty and such advice may be given at his discretion either orally or in writing.

3. The Director of Public Prosecutions may assist prosecutors by authorising the payment of special expenses, including the cost of the preparation of evidence, and the payment of fees to counsel and to scientific or professional witnesses if he is satisfied that such special expenses are necessarily incurred for the proper conduct of any criminal proceeding.

TABLE OF STATUTES

TABLE OF CASES

ABBREVIATIONS

A.C. ..	..	Law Reports, Appeal Cases, House of Lords.
All E.R.	..	All England Reports.
Cr.App.R.	..	Criminal Appeal Reports.
J.P. ..	..	Justice of the Peace.
K.B. ..	..	Law Reports, King's Bench Division.
L.J.Q.B.	..	Law Journal, Queen's Bench.
L.T. ..	..	Law Times Reports.
N.I. ..	..	Northern Ireland Reports.
P. ..	..	Law Reports, Probate, Divorce and Admiralty Division.
P. & D.	..	Law Reports, Probate and Divorce.
Q.B.D.	..	Law Reports, Queen's Bench Division.
T.L.R.	..	The Times Law Reports.

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